TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted], 1911

No. [redacted] 112

ANNIE FAIRBANKS, A MINOR, BY HER GUARDIAN AD LITEM, BENJAMIN L. FAIRBANKS, APPELLANT,

vs.

THE UNITED STATES.

No. [redacted] 113

EDWARD L. WARREN, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED AUGUST 10, 1909.

(21,792 and 21,793.)

(21,792 and 21,793.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 566.

ANNIE FAIRBANKS, A MINOR, BY HER GUARDIAN AD LITEM, BENJAMIN L. FAIRBANKS, APPELLANT,

vs.

THE UNITED STATES.

No. 567.

EDWARD L. WARREN, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Caption to transcript from United States circuit court of appeals	a
Memorandum of clerk of circuit court as to contents of transcript	1
Caption to transcript from United States circuit court	1
Pleadings, etc., in case of Annie Fairbanks *vs.* United States	1
Petition for appointment of guardian *ad litem*	1
Consent of B. L. Fairbanks to act as guardian *ad litem*	2
Order appointing Benjamin L. Fairbanks guardian *ad litem*	3
Bill of complaint	3
Affidavit of service of copy of bill of complaint on United States attorney, etc	7
Appearance of defendant	8
Record entry of appearance of defendant	8
Answer	8

Page.
Replication, filed August 24, 1907 ... 11
Replication, filed September 16, 1907 ... 12
Stipulation extending time to file replication ... 15
Stipulation for appointment of special examiner ... 15
Order appointing special examiner ... 16
Notice to defendant of desire of complainant to have testimony taken orally ... 16
Order of special examiner fixing time for taking testimony ... 16
Notice to defendant of time and place for taking testimony ... 17
Stipulation for hearing and for amendment to bill of complaint ... 17
Pleadings, etc., in case of Warren *vs.* United States ... 18
Bill of complaint ... 18
Affidavit of service of copy of bill of complaint on United States attorney, etc ... 22
Appearance of defendant ... 23
Record entry of appearance of defendant ... 23
Answer ... 23
Stipulation extending time to file replication ... 26
Replication, filed August 24, 1907 ... 26
Replication, filed September 14, 1907 ... 27
Stipulation for appointment of special examiner ... 30
Order appointing special examiner ... 30
Notice to defendant of complainant's desire to have testimony taken orally ... 31
Order of special examiner fixing time for taking testimony ... 31
Notice to defendant of time and place for taking testimony ... 32
Stipulation for hearing and for amendment to bill of complaint ... 32
Record of proceedings before the special examiner ... 33
Stipulation that the testimony in the two cases shall be taken together, etc ... 33
Testimony for complainants ... 34
Testimony of Simon Michelet ... 34
Complainants' Exhibit 17—Letter, Simon Michelet to Mr. Mooers, February 15, 1905 ... 49
Stipulation as to testimony of Samuel Trask ... 50
Stipulation as to testimony of Samuel Sloan ... 51
Testimony of Simon Michelet (continued) ... 51
William F. Campbell ... 61
Joseph E. Perrault ... 63
Simon Michelet (continued) ... 71
Edward Warren ... 72
Benjamin L. Fairbanks ... 78
W. R. Morton ... 83
Testimony for defendant ... 85
Testimony of Samuel E. Mooers ... 85
T. B. Beaulieu ... 104
Samuel E. Moores (recalled) ... 110
Testimony for complainants in rebuttal ... 111
Testimony of Samuel E. Mooers (recalled) ... 111
J. E. Perrault (recalled) ... 112
W. R. Morton (recalled) ... 113
Simon Michelet (recalled) ... 114
Edward Warren (recalled) ... 120

Page.
Testimony for defendant in surrebuttal 121
Testimony of Simon Michelet (recalled) 121
Testimony of A. S. King 123
Testimony for complainants continued 125
Testimony of J. E. Perrault (recalled) 125
Testimony for defendant continued 125
Testimony of A. S. King 125
Complainants' exhibits 126
1—Letter, B. L. Fairbanks to Simon Michelet, June 29, 1904 ... 126
2—Letter, A. C. Tonner, Acting Commissioner, to Simon Michelet, June 14, 1904 126
3—Letter, A. C. Tonner, Acting Commissioner, to Simon Michelet, June 7, 1904 127
12—Stub showing additional allotment to Annie Fairbanks, April 24, 1905 129
4—Application of Annie Fairbanks for additional allotment, April 24, 1905 129
5—Memorandum of application of Annie Fairbanks for additional allotment 130
6—Plat of additional allotment to Annie Fairbanks 130
Defendant's exhibits 130
C—Stub showing allotment to Alice Mooers, August 8, 1904 130
D—Application of Samuel E. Mooers for allotment to Alice Mooers, August 8, 1904 131
B—Stub showing allotment to Lewis Mooers, August 8, 1904 ... 131
A—Application of Samuel E. Moores for allotment to Lewis Mooers, August 8, 1904 131
Complainants' exhibits continued 132
10—Plat showing allotment to Edward L. Warren, April 24, 1905 132
7—Application of E. L. Warren for additional allotment, June 30, 1904 132
11—Stub showing additional allotment to Edward Warren, April 24, 1905 133
8—Application of Edward Warren for additional allotment, April 24, 1907 133
9—Memorandum of application of Edward Warren 133
13—Letter, Commissioner of Indian Affairs to United States Indian agent, White Earth agency, March 31, 1906 133
14—Letter, Acting Commissioner of Indian Affairs to United States Indian agent, White Earth agency, July 13, 1906 .. 134
15—Letter, Secretary of the Interior to Commissioner of Indian Affairs, June 29, 1906 135
16—Letter, Acting Commissioner of Indian Affairs to Darwin S. Hall, August 31, 1892 137
18—Letter, Acting Commissioner of Indian Affairs to superintendent in charge of White Earth agency, May 18, 1907 . 138
19—Stub showing allotment to Alice Mooers, May 15, 1905 139
20—Application of Samuel E. Mooers for allotment to Alice Mooers, May 15, 1905 139
21—Stub showing allotment to Lewis Mooers, May 15, 1905 139
22—Application of Samuel E. Mooers for allotment to Lewis Mooers, May 15, 1905 140

Page.

23—Stub showing additional allotment to Lewis Mooers, May 16, 1905 140
24—Application of Lewis D. Mooers for additional allotment to Lewis Mooers, May 16, 1905 140
31—Memorandum of application for allotment to Lewis Mooers. 140
25—Stub showing additional allotment to Alice Mooers, May 17, 1905 141
26—Application of Alice Mooers for additional allotment, May 17, 1905 142
30—Memorandum of application of Alice Mooers 143
27—Plat of lot 4, section 7, etc., T. 141, R. 42 143
28—Application of Samuel E. Mooers for allotment to Charles E. Mooers, November 5, 1895 144
29—Application of Samuel E. Mooers for allotment, October 22, 1895 144
32—Certificate of Acting Commissioner of Indian Affairs to copies 144
33—Testimony of Samuel E. Mooers before Inspector Churchill. 144
Defendant's Exhibit E—Decision of Secretary of Interior *in re* Alice J. Mooers *et al. vs.* Warren and Fairbanks 150
Plaintiffs' Exhibit 34—Letter, Acting Commissioner of Indian Affairs to United States Indian agent, White Earth agency, November 8, 1905 154
Certificate of special examiner 154
Clerk's certificate to trial record 154
Order setting Fairbanks case for trial 154
Order setting Warren case for trial 154
Order of submission of the Warren case 154
Order of submission of the Fairbanks case 154
Opinion of the court 154
Decree in favor of Annie Fairbanks 160
Petition for appeal from the decree in favor of Annie Fairbanks and order allowing same 160
Assignment of errors in the case of Fairbanks *vs.* United States 160
Citation to Annie Fairbanks and admission of service 160
Stipulation for transmission upon appeal of the testimony in but one case 160
Order to include in transcript on appeal the testimony in but one case 160
Decree in favor of Edward L. Warren 160
Petition for appeal from decree in favor of Edward L. Warren and order granting same 170
Assignment of errors in the case of Warren *vs.* United States 170
Citation to Edward L. Warren and admission of service 170
Stipulation for transmission upon appeal of the testimony in but one case 170
Order to include in transcript on appeal the testimony in but one case 170
Clerk's certificate to transcript 170
Appearance of counsel for appellee in cause No. 2926 170
Appearance of Mr. Charles C. Houpt as counsel for appellant in cause No. 2926 170
Appearance of Mr. R. J. Powell as counsel for appellant in cause No. 2926 170
Order of submission in cause No. 2926 170
Opinion of United States circuit court of appeals in causes Nos. 2926 and 2927. 170

Page.
Decree of United States circuit court of appeals in cause No. 2926 183
Petition for allowance of appeal in cause No. 2926 184
Assignment of errors on appeal in cause No. 2926 185
Bond on appeal in cause No. 2926 187
Affidavit as to amount in controversy in cause No. 2926 189
Order allowing appeal to Annie Fairbanks, a minor, etc., in cause No. 2926.. 189
Citation on appeal of Annie Fairbanks, a minor, etc., and admission of service in cause No. 2926 191
Appearance of counsel for appellee on appeal of Edward L. Warren in cause No. 2927 191
Appearance of Mr. Charles C. Houpt as counsel for appellant in cause No. 2927 192
Appearance of Mr. R. J. Powell as counsel for appellant in cause No. 2927.. 193
Order of submission in cause No. 2927 193
Memorandum as to opinion in cause No. 2927 194
Decree of United States circuit court of appeals in cause No. 2927 194
Petition for allowance of appeal in cause No. 2927 194
Assignment of errors on appeal of Edward L. Warren in cause No. 2927 195
Bond on appeal of Edward L. Warren in cause No. 2927 197
Affidavit as to amount in controversy in cause No. 2927 199
Order allowing appeal to Edward L. Warren in cause No. 2927 200
Citation on appeal of Edward L. Warren and admission of service in cause No. 2927 200
Clerk's certificate to transcript 201

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1909, of said Court, before the *the* Honorable Elmer B. Adams, Circuit Judge, and the Honorable John A. Riner and the Honorable Charles F. Amidon, District Judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the nineteenth day of September, A. D. 1908, a transcript of record, pursuant to appeals allowed by the Circuit Court of the United States for the District of Minnesota, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in certain causes wherein the United States was Appellant and Annie Fairbanks, a minor, by Benjamin Fairbanks, her Guardian ad litem, was Appellee, and the United States was Appellant and Edward L. Warren was Appellee, which said transcript of record is in the words and figures following, to-wit:

1 The following Trial Record in Equity was prepared by the Clerk pursuant to Rule XXVI of the Rules and Practice of this Court; contains all the pleadings in both cases and all the testimony and exhibits used in the trial thereof, which said Trial Record is in the words and figures following, towit:

2 Pleas before the Honorable the Circuit Court of the United States for the District of Minnesota, Sixth Division.

Annie Fairbanks, a minor, by her Guardian ad litem, Benjamin L. Fairbanks, Complainant,
#180 Against In Equity.
The United States of America, Defendant,

and

Edward L. Warren, Complainant,
#181 Against
The United States of America, Defendant.

Trial Record.

George B. Edgerton, Attorney for Complainant, 302 National German American Bank Bldg. St. Paul, Minnesota.

Charles C. Houpt, U. S. Attorney, and Attorney for Defendant, St. Paul, Minnesota.

Prepared by the Clerk Pursuant to Rule XXVI.

Filed Jany. 4th, 1908. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

3 Petition for Guardian.

United States Circuit Court, District of Minnesota.

To the Above Named Court:

Your petitioner, Annie Fairbanks, respectfully represents:

1. That she is a minor fourteen years of age, and a resident of the White Earth Chippewa Indian Reservation in the State of Minnesota.

2. That she has no general or testamentary guardian.

3. That she has a good cause of action, as she is advised by George B. Edgerton, an attorney of this court, against the

United States of America, which she is desirous of having prosecuted at once in this court.

4. That her father, B. L. Fairbanks, is a resident of said Reservation in said State of Minnesota, and a responsible and competent person to act as her guardian ad litem to prosecute said action.

Wherefore, your petitioner, who has made no other application therefor, prays that the said B. L. Fairbanks be appointed as such guardian.

ANNIE FAIRBANKS.

State of Minnesota,
County of Ramsey—ss.

Annie Fairbanks, being duly sworn, says that she has read the foregoing petition subscribed by her and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated on information and belief, and as to those matters she believes it to be true.

ANNIE FAIRBANKS.

Subscribed and sworn to before me this 5th day of June, 1907.

E. S. EDGERTON.
(Notarial Seal) Notary Public, Ramsey County, Minn.
(Ramsey Co., Minn.)
My Commission expires Feby. 27, 1909.

I hereby consent to act as guardian ad litem of Annie Fairbanks, for the purposes stated in the foregoing petition. Dated June 5th, 1907.

B. L. FAIRBANKS.

State of Minnesota,
County of Ramsey—ss.

B. L. Fairbanks, being duly sworn, says that he is the person mentioned in the foregoing petition as the father of the petitioner; that he signed the foregoing consent to act as guardian; that he is a resident of White Earth Chippewa Indian Reservation in said State of Minnesota; that he has no interest in the action mentioned in said petition adverse to the petitioner; and that he is worth at least five hundred dollars

above his debts and liabilities and exclusive of his property exempt from execution.

B. L. FAIRBANKS.

Subscribed and sworn to before me this 5th day of June, 1907.

(Notarial) E. S. EDGERTON.
(Seal) Notary Public, Ramsey County, Minnesota.
My Commission expires Feby. 27, 1909.

On the foregoing petition, consent and affidavit, and on motion of George B. Edgerton, attorney for the petitioner.

It Is Ordered that Benjamin L. Fairbanks be and he is hereby appointed guardian ad litem of Annie Fairbanks, and authorized to prosecute the action mentioned in said petition.

Dated June 5, 1907.

WM. LOCHREN, Judge.

Filed June 5th, 1907. Henry D. Lang, Clerk.

6 Complaint.

In the United States Circuit Court for the District of Minnesota.

Annie Fairbanks, a minor, by her guardian ad litem, Benjamin L. Fairbanks, Plaintiff,
vs. In Equity.
The United States, Defendant.

The plaintiff herein respectfully shows to this Court:

1. That she is a minor child of the age of fourteen years, and is the daughter of B. L. Fairbanks, who has been duly appointed by this court her guardian ad litem for the purpose of prosecuting this action.

2. That plaintiff is now and has been at all times since her birth a resident of the White Earth Indian Reservation in Minnesota, and was born upon and has always lived upon said Reservation as aforesaid.

3. That said plaintiff is now and was at the time of her birth and ever since has been a member of the Mississippi Band of Chippewa Indians upon said reservation, and that she is in part of Indian blood.

4. That said plaintiff is now and ever since the date of her birth has been an Indian ward of the Government of the United States, under the care and control of an Indian Agent of said government located upon said reservation, as aforesaid, and is

now and has been at all times since her birth entitled to and received and is still receiving annuities from the government of the United States, and as such, is entitled to allotments
7 of land agreeably to the provisions of law and treaties of the United States.

5. That said plaintiff is a Chippewa Indian and lived in the State of Minnesota and became entitled to the benefits of the act of Congress approved January 14, 1889, entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," which act was duly ratified by a majority of the adult male members of the various bands of Chippewa Indians in the State of Minnesota, and is now being administered by the officials of the Department of the Interior of the United States.

6. That by treaty of April 18, 1867, between the United States and the Mississippi band of Chippewa Indians, whereby said White Earth Indian reservation was established, it was agreed that half breeds and mixed-bloods who actually live on one of the reservations among their people shall be participants in the annuities paid to such Indians, and that upon the allotment in severalty of the lands on said reservation of White Earth to the members of said Mississippi bands, each should receive one hundred and sixty acres of land; and by special acts of Congress provisions are made for the allotments of said land in severalty to the Indians living on the White Earth reservation aforesaid, of one hundred and sixty acres each.

7. That under said treaty of 1867 and the several acts of Congress relating to the same and passed subsequent to said treaty and particularly the acts of Congress of January 14, 1889, and of April 29, 1904, providing for additional allotments for the Chippewa Indians on the White Earth reservation, as aforesaid, said plaintiff is entitled to an allotment of
8 land on said reservation of eighty acres in addition to the allotment of eighty acres already given her by the United States.

8. That the plaintiff, during the months of June, 1904, and April, 1905 duly selected as the land to be allotted to her as an additional allotment to fill out the allotment of one hundred and sixty acres to which she was entitled under and by virtue of said treaty and said acts of Congress as aforesaid the following described land, to-wit:

The West half of the Northwest quarter of Section fifteen (15), in Township one hundred and forty-two (142), Range thirty-nine (39).

And that said selection is situated within the boundary of the White Earth reservation in Minnesota.

9. That by the act of Congress approved February 6, 1901, authority is granted to "all persons who are whole or in part Indian blood or descent who are entitled to allotments of land under any laws of Congress, or who claim to be entitled to land under any allotment act or under any grant made by Congress, or claim to have been unlawfully denied or excluded from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress to commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper Circuit Court of the United States, and the Circuit Courts of the United States are given jurisdiction of such actions, suit or proceeding." And the plaintiff herein brings this proceeding against the United States under and by virtue of said act.

9 That the said plaintiff did during the months hereinbefore set forth, duly apply to the United States through its proper officers, including the Indian Agent of said United States at White Earth Agency, Minnesota, within the limits of which reservation said lands and all thereof are situated, and to the Secretary of the Interior of the United States at Washington, D. C., to have allotted to her the above described lands and premises, and while said lands are now and were at the time the same were so selected as aforesaid by plaintiff and at the time the said United States was requested to allot said lands to plaintiff, to-wit, in June, 1904, and April, 1905, said lands and all thereof were situated upon the White Earth Indian reservation in the State of Minnesota, and were then and are now subject to allotment as aforesaid to Indians agreeably to the treaties and laws of the United States as aforesaid.

That although said plaintiff was duly entitled to an additional allotment of eighty acres from the United States at the time the above described lands were selected by her and demand upon said United States, through its proper officers and representatives, that said above described tract be assigned and allotted and set over to said plaintiff agreeably to the laws of the United States, and that said lands so selected and above described and all thereof were set aside by the government by its said laws for the purpose of being allotted to Indians which came within the class of which plaintiff is a member, and that said lands were not to be used or disposed of by the government of the United States for any other purpose than that of being allotted to Indians entitled thereto, said United States, through its officers and agents, did, in the Month of June,
10 1907, prior to the commencement of this action, unlawfully refuse to allot said premises or any part thereof to

plaintiff and unlawfully denied and excluded the plaintiff from any allotment of said land and every parcel thereof to which she claims to be lawfully entitled by virtue of said several acts of Congress and treaties aforesaid, and does deny plaintiff the right to select said land or any part thereof as aforesaid, although the fact that plaintiff is legally entitled to have the said lands allotted to her is well known to the United States.

Plaintiff further alleges that the lands described in the complaint were duly allotted to plaintiff on April 24, 1905, and that thereafter and before the commencement of this action she has been unlawfully denied and excluded from said allotment and land, which she claims she was and is lawfully entitled to by virtue of the treaty and several acts of Congress referred to in the complaint action. (Amendment to the Complaint made at the trial on Stipulation and Order).

Wherefore the plaintiff prays judgment against the defendant to the effect that this Honorable Court shall adjudge, order and decree that the plaintiff is entitled to select and have allotted to her the above described lands by her selected within the limits of the White Earth Indian reservation in the State of Minnesota, and have said premises patented to her as provided in the acts of Congress of January 14, 1899, and of April 24, 1904 providing for additional allotments for the Chippewa Indians on the White Earth Indian Reservation aforesaid, also of February 8, 1887, (General Allotment Act) and the said treaty of 1867 together with such other and further relief as the Court may deem just and equitable in the premises.

GEORGE B. EDGERTON,
Attorney for plaintiff.
302 National German American Bank Bldg. St. Paul Minnesota.

11 State of Minnesota,
County of Ramsey—ss.

Personally appeared before me, the undersigned Notary Public in and for the said county and state, Annie Fairbanks and Benjamin L. Fairbanks, who being duly sworn, depose and say, the former that she is the plaintiff in the foregoing cause of action; and the latter that he is guardian ad litem for Annie Fairbanks, duly appointed by said Court to prosecute said action; that they have read the petition hereto attached; that the statements made in said petition as of their own

knowledge are true and that the said statements made therein on information and belief they believe to be true.

ANNIE FAIRBANKS,
BENJAMIN L. FAIRBANKS,

Subscribed and sworn to before me this 5th day of June, 1907.

(Notarial Seal, Ramsey Co., Minn.) E. S. EDGERTON,
Notary Public, Ramsey County, Minnesota,
My commission expires Feb'y 27, 1909.

Filed June 5th 1907. Henry D. Lang, Clerk.

12 Affidavit.

In the United States Circuit Court for the District of Minnesota.

Annie Fairbanks, a minor, by her guardian ad litem, Benjamin L. Fairbanks, Plaintiff.

vs. In Equity.

The United States, Defendant.

State of Minnesota,
County of Ramsey—ss.

George B. Edgerton, being duly sworn on oath, says that he is the attorney for the plaintiff in the above entitled action; that the original complaint in the above entitled action has been filed in said court; that on the 5th day of June, 1907, at the City of St. Paul in said Ramsey County, he personally served a copy of said complaint upon Honorable C. E. Houpt, [Inited] States District Attorney for Minnesota, by then and there handing to and leaving with him at his office in the post-office building in said City of St. Paul, a copy of said complaint.

Affiant further says that on said 5th day of June, 1907, at the said City of St. Paul, he duly mailed a copy of said complaint to the Attorney General of the United States at Washington, D. C., by registered leter, duly addressed to the Attorney General of the United States, Washington, D. C., postage prepaid, and deposited said letter, so addressed, in a sealed envelope, in the United States postoffice on said day at
13 the City of St. Paul, Minnesota.

GEORGE B. EDGERTON.

Subscribed and sworn to before me this 6th day of June, 1907.
(Notarial Seal, Ramsey Co., Minn.)

E. S. EDGERTON,
Notary Public, Ramsey County, Minnesota.
My commission expires February 27, 1909.

Filed June 6th 1907. Henry D. Lang, Clerk.

14 Appearance of Defendant.

Circuit Court of the United States, District of Minnesota, 6th Division.

Annie Fairbanks, a Minor by her guardian ad litem Benj. Fairbanks
#52. vs.
U. S. of America.

Appearance.

The Clerk will enter my appearance for the U. S. of America Defendant.

CHAS. C. HOUPT, U. S. Attorney.

Filed July 8, 1907, Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

15 1907
July 8.

Annie Fairbanks, a minor by her guardian ad litem Benjamin Fairbanks, Complainant.
#180. against
The United States, Defendant.

This day comes the defendant The United States, by Charles C. Houpt U. S. District Attorney, its solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

HENRY D. LANG, Clerk.
By L. A. Levorsen, Deputy.

16 Answer.

United States Circuit Court, District of Minnesota.
Sixth Division.

Annie Fairbanks, [be] her guardian ad litem Benjamin L. Fairbanks, Plaintiff,
vs.
The United States of America, Defendant.

Answer.

The defendant herein for its answer to the complaint of the plaintiff in the above entitled action,

First: The defendant admits the truth of the allegations as set forth and contained in Paragraphs One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), of said complaint.

Further answering said complaint the defendant alleges and shows to the Court that one Samuel E. Mooers is and was a Chippewa Indian residing upon the White Earth Indian Reservation and entitled to all the benefits and privileges accruing to him as such Indian under the Laws and Treaties of the United States relating to the Mississippi band of Chippewa Indians; that he is the father of one Lewis Mooers a minor child, who likewise was and is entitled to such benefits and privileges.

That heretofore, to-wit: On August 8th, 1904 said Samuel E. Mooers for and on behalf of his said minor child Lewis Mooers duly made application to the United States Indian Agent for an original allottment for said minor child under the Act of January 14th. 1889 of the West half (W½) of the North-
west W Quarter (NW¼) of Section Fifteen (15) Town-
17 ship One hundred and forty-two (142) North Range
Thirty nine (39), being the same land mentioned and described in the complaint herein, and that thereafter and in conformity to law said land was duly allotted to said Lewis Mooers. That thereafter and prior to April 24th. 1905 said allottment was erroneously cancelled by the Indian Bureau of the United States on the ground and for the reason that said land had been classified as pine lands. That under the ruling of the Indian Bureau then in force and effect all lands so classified, or lands chiefly valuable for the pine timber standing or growing thereon, should be reserved from individual allotment and to be held or disposed of for the common benefit of all the Indians of the reservation. That thereafter and following such cancellation the said land was allotted to Annie Fairbanks, the plaintiff herein.

That after the said allotment to the plaintiff the Commissioner of Indian Affairs reconsidering his former order directing the cancellation of the allotment of said Lewis Mooers on March 31st. 1906 instructed the United States Indian Agent to cancel said allotment to Annie Fairbanks and again re-allot the land to said Lewis Mooers.

That upon such instruction being received by the said Indian Agent he thereupon, in compliance therewith, did again allot said land to said Lewis Mooers that by letter of July 13th, 1906 the said Indian Agent was again instructed by the Commissioner of Indian Affairs to re-instate said allotment to the plaintiff herein and to grant other tracts of land to said Lewis Mooers under the provisions of the Act of January 14th. 1889.
That on April 23rd. 1907 the said Samuel E. Mooers
18 on behalf of his said infant child Lewis Mooers duly appealed to the Secretary of the Interior from the said

decision of the Commissioner of Indian Affairs of July 13th. 1906, which said appeal was duly heard by the Secretary of the Interior and on May 13th. 1907 the Secretary of the Interior reversed the decision of the Commissioner of Indian Affairs and directed the allotment of said land to said Lewis Mooers as his allotment under the provisions of the Act of January 14th. 1889 and upon rendition and filing of said decision the said White Earth Indian Agent was thereupon directed to allot other tracts of lands on the White Earth Reservation to this plaintiff under the provisions of the Act of April 28th. 1904.

The defendant specifically denies that it has ever denied to said plaintiff her right to an allotment on said reservation other than as to the land herein described and as to such land it bases its denial of her right to an allotment therein on the ground that said minor child Lewis Mooers had by prior and earlier application secured an equitable right and interest therein superior to the right of this plaintiff. The only ground and cause for cancellation of the original application made in behalf of said minor child was that said land contained valuable pine timber and for that reason should be reserved for the benefit of the Chippewa Indians residing on said reservation. That this ruling of the Indian Bureau was void and unwarranted by the then existing state of the law relating to the affairs and property of said Chippewa Indians and in consequence of such erroneous ruling so reserving said pine lands from allotment the cancellation of said original application was without authority of law and void.

19 Further answering the defendant denies each and every allegation in said complaint contained save as hereinbefore admitted, qualified or specifically denied.

Wherefore the defendant prays the judgment of the Court that the plaintiff take nothing by this action and that it be hence dismissed with its costs and disbursements.

CHAS. C. HOUPT,
United States Attorney for the
District of Minnesota.

District of Minnesota,
Office of Clerk of
U. S. Circuit Court—ss.

Charles C. Houpt being duly sworn deposes and says that he is the United States Attorney for the District of Minnesota and attorney for the defendant in the above entitled action; that the foregoing answer is true of his own knowledge ex-

cepting as to such matters as are therein stated on information and belief and as to such matters that he believes it to be true.

CHAS. C. HOUPT.

Subscribed and sworn to before me on this 6th day of August, A. D. 1907.

(Seal)

LOUISE B. TROTT,
Deputy Clerk U. S. Circuit Court
for the Dist. of Minnesota.

Filed August 7th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

20 Replication.

United States Circuit Court, District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,
vs.
The United States of America, Defendant.

This replicant, Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, saving and reserving to herself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, The United States of America, for replication thereunto saith that she doth and will aver, maintain, and prove her said bill to be true, certain and sufficient in the law to be answered unto the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true;
21 all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct and humbly prays as in and by her said bill she hath already prayed.

GEORGE B. EDGERTON,
Attorney for Plaintiff, 302 National German American Bank Bldg., St. Paul, Minnesota.

Filed Aug. 24, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

22 Reply.

United States Circuit Court District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,
vs.
The United States of America, Defendant.

Now comes the plaintiff and for reply to the answer herein denies each and every allegation and each and every part of each and every allegation of new matter in said answer contained except what is hereinafter specifically admitted.

Admits that the said Samuel E. Mooers is a Chippewa Indian and the father of said Lewis Mooers, a minor, who is seven years of age and no more.

That the pretended application of said Samuel E. Mooers for an allotment for his said minor child, claimed to be made on August 8th, 1904, was not made to the United States Indian Agent, but on the contrary, the said pretended application was made during the absence of said United States Indian Agent from said Reservation, and said pretended application was made to a clerk of said Agency, which clerk was not authorized by law or otherwise to make said allotment or receive such application, and that the pretended allotment so made by said clerk was illegal and void. That said appli-
23 cation was made without the knowledge or consent of the said United States Indian Agent.

Plaintiff alleges that thereafter and prior to April 24th, 1905, said pretended allotment, so made by said clerk, was cancelled by the Indian Bureau of the United States, for the following reasons: That said allotment had been improperly granted to said Lewis Mooers, and that said land was pine land and chiefly valuable for the pine timber standing and growing thereon; and that there was a ruling of the United States Indian Bureau then in force and effect, that all lands so classified, or lands chiefly valuable for the pine timber standing or growing thereon, should be reserved from individual allotment and be held or disposed of for the common benefit of all the Indians of the said Indian Reservation.

Plaintiff admits and alleges that on the 29th day of June, 1904, the said Benjamin E. Fairbanks duly selected the said land for plaintiff, and on said day the said Benjamin L. Fairbanks duly applied to the United States Indian Agent at White Earth, in writing, for an allotment to plaintiff of said lands

so selected, and that the same was wrongfully refused, and on the 24th day of April, 1905, the said Benjamin L. Fairbanks again applied to the United States Indian Agent for an allotment of said land to plaintiff, and that said land was then and there duly allotted to her and she took possession thereof under said allotment and selection.

That notwithstanding such settlement and occupancy and the selection so made, and the said allotment to this plaintiff, the Commisioner of Indian Affairs, disregarding such selection and allotment, wrongfully and unlawfully pretended to re-allot said lands to said Lewis Mooers, and wrongfully
24 attempted to cancel said allotment which had formerly been made to this plaintiff, and wrongfully directed the United States Indian Agent on said Reservation to cancel said allotment and selection so made by this plaintiff, and wrongfully and unlawfully re-allotted said land to said Lewis Mooers.

Plaintiff further alleges that said Samuel E. Mooers, at the time he made said application to the said United States Indian Agent for said allotment for his said minor child, had actual knowledge and notice of the selection so made to plaintiff and the possession of said land by this plaintiff.

Plaintiff further admits and alleges that thereafter and on the 13th day of July, 1906, the Commissioner of Indian Affairs made another order directing the cancellation of said allotment so made to said Lewis Mooers, and on July 13th, 1906, the said Indian Agent was instructed by the order of said Commissioner to reinstate the selection and allotment made to this plaintiff of said lands and to grant other tracts of land to said Lewis Mooers.

Plaintiff further replying alleges that no appeal was ever taken from said order of allotment made by the Commissioner of Indian Affairs, dated July 13th, 1906, on April 23, 1907, or at any other time, and alleges that if there was ever any appeal taken or hearing had before the Secretary of the Interior, the same was had ex-parte and without any notice given to the plaintiff, her father, or her attorney, or any other person for her; that the plaintiff, her father, and her attorney never had any notice or knowledge of any pretended appeal or hearing before the Secretary of the Interior, and never had any notice or knowledge of such pretended appeal until long after the pretended decision was made by said Secre-
25 tary of the Interior in May, 1907.

Plaintiff further alleges that the said order made by the Commissioner of Indian Affairs, dated July 13th, 1906, reinstating the allotment and selection made by this plaintiff to said lands is in full force and effect, and that the pretended realloting of said lands to said Lewis Mooers is wrongful and illegal and unlawful, and defendant wrongfully refuses to allot said land to the plaintiff, as alleged in the complaint.

Further replying plaintiff alleges that the said Samuel E. Mooers, long prior to August 8th, 1904, selected for allotment for said minor child, Lewis Mooers, other lands than those described in the complaint in this action, and that prior to said August 8th, 1904, the said Samuel E. Mooers had improved the said lands so selected and had fenced the same, and on account thereof, the said Lewis Mooers was not entitled to said August 8th, 1904, or any time subsequent thereto, to have the lands described in the complaint allotted to him, or any other lands except those lands which had been selected and improved for him by said Samuel E. Mooers, as aforesaid.

Wherefore, plaintiff asks judgment of this Court as prayed for in her complaint.

GEORGE B. EDGERTON.
Attorney for Plaintiff.

State of Minnesota,
County of Becker—ss.

Annie Fairbanks and Benjamin L. Fairbanks, being duly sworn, depose and says that they have read the foregoing reply and that the same is true of their own knowledge,
26 except as to matters therein stated upon information and belief, and as to those matters they believe it to be true.

ANNIE FAIRBANKS.
BENJAMIN L. FAIRBANKS.

Subscribed and sworn to before me this 12th day of September, 1907.

B. S. FAIRBANKS.
Notary Public, Becker County, Minnesota.

(Notarial Seal)
(Becker County, Minn.)

My commission expires Jan. 19" 1913.

Filed September 16th, 1907, Henry D. Lang, Clerk.

Plaintiff further alleges that the lands described in the complaint were duly allotted to plaintiff on April 24, 1905, and that thereafter and before the commencement of this action he has been unlawfully denied and excluded from said allotment and land, which he claims he was and is lawfully entitled to by virtue of the treaty and several acts of Congress referred to in the complaint in this action.

27 Stipulation.

United States Circuit Court District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,
vs.
The United States of America, Defendant.

It is hereby stipulated and agreed by and between the plaintiff and defendant that the plaintiff have twenty days additional time to file and serve a reply to the answer of the defendant in the above entitled action.

Dated August 21, 1907.

GEO. B. EDGERTON,
Attorney for Plaintiff.

CHAS. C. HOUPT,
Attorney for Defendant.

Filed Aug. 23rd, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

28 Stipulation and Order.

United States Circuit Court District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,
vs.
The United States of America, Defendant.

It is hereby stipulated and agreed by and between the attorneys of the respective parties to this cause that George B. Hillman, of the City of St. Paul, may be appointed Special Examiner to take the testimony orally of the witnesses whose evidence the parties desire to be adduced in said cause.

It is further stipulated that the Court may sign the annexed order appointing the said George B. Hillman Special Examiner to take said testimony.

It is further stipulated that said examiner may commence the taking of said testimony orally at White Earth, Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day.

Dated September 19th, 1907.

GEO. B. EDGERTON,
Attorney for Plaintiff.

CHAS. C. HOUPT,
Attorney for Defendant.

29 United States Circuit Court District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,

vs.

The United States of America, Defendant.

Pursuant to the foregoing stipulation,

It is hereby ordered, that George B. Hillman, of the City of St. Paul, be and he is hereby appointed Special Examiner to examine and take the testimony orally of the witnesses in said cause whose testimony the respective parties hereto desire to be adduced in said cause.

Dated September 19th, 1907.

WM. LOCHREN, Judge.

Filed Sept. 25, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Dep.

30 Notice.

United States Circuit Court District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,

vs.

The United States of America, Defendant.

To Charles C. Houpt, United States Attorney for the District of Minnesota and Attorney for the above named Defendant:

Please take notice that the plaintiff in the above entitled cause desires the evidence to be adduced in said cause to be taken orally.

GEORGE B. EDGERTON,
Attorney for Plaintiff.

Dated September 14th, 1907.

Filed Sept. 27th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

31 Order.

United States Circuit Court, District of Minnesota,
Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,

vs.

The United States of America, Defendant.

It is hereby Ordered, That the time and place of the examination of witnesses in the above entitled cause be fixed at White

Earth, Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day.

Dated September 20th, 1907.

GEO. B. HILLMAN,
Special Examiner.

Filed Sept. 27th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

32 Notice.

United States Circuit Court, District of Minnesota, Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,

vs.

The United States of America, Defendant.

Honorable Charles C. Houpt,
Attorney for the above named Defendant:

Please take Notice, That the Special Examiner appointed by this Court for taking the testimony orally of the witnesses in the above cause, has fixed the time and place for taking such testimony, to-wit, at White Earth, Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day, and that the examination of witnesses will commence at that time and place before the said examiner.

Dated September 23rd, 1907.

Very respectfully,

GEORGE B. EDGERTON,
Attorney for Plaintiff.

Filed Sept. 27th, 1907. Henry D. Lang. By L. A. Levorsen, Deputy.

33 Stipulation.

United States Circuit Court, District of Minnesota, Sixth Division.

Annie Fairbanks, by her guardian ad litem Benjamin L. Fairbanks, Plaintiff,

vs.

The United States of America, Defendant.

It is hereby stipulated and agreed by and between the respective parties to the above entitled action that the above

entitled cause may be placed upon the calendar of the next General Term of the United States Circuit Court, Sixth Division, to be held at Fergus Falls on November 12, 1907, for trial without any other notice.

It is further stipulated that said cause may be brought on for trial before one of the judges of said court at St. Paul or Duluth, within 60 days, to suit the convenience of the court and the attorneys for the parties.

It is further stipulated that the copies of exhibits which shall be attached to the report of the Special Examiner shall have the same force and effect as evidence as if the original exhibits were attached thereto.

It is further stipulated and agreed that the plaintiff may at any time if she so desires, amend her complaint substantially as follows: That the lands described in the complaint
34 were allotted to plaintiff on April 24, 1905, and that thereafter and before the commencement of this action has been unlawfully denied and excluded from said allotment and land which plaintiff claims she was and is lawfully entitled to by virtue of the treaty and several acts of Congress referred to in the complaint in this action.

It is further stipulated and agreed that if said amendment be made, the evidence taken and reported before and by the Special Examiner, heretofore appointed, shall be received and considered the same as if taken and reported after said amendment, subject, however, to objections as to immateriality and irrelevancy.

Dated November 1, 1907.

GEO. B. EDGERTON,
Attorney for Plaintiff.

CHAS. C. HOUPT,
Attorney for Defendant.

Filed Dec. 25th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

35 Bill of Complaint.

In the United States Circuit Court for the District of Minnesota.

Edward L. Warren, Plaintiff,
vs. In Equity.
The United States, Defendant.

The plaintiff herein respectfully shows to this court:

1. That the plaintiff is now and has been at all times since May, 1904, a resident of the White Earth Indian reservation in Minnesota, and has legally resided and lived upon said reservation as aforesaid since said date and long prior thereto.

2. That said plaintiff is now and was at the time of his birth and ever since has been a member of the Mississippi band of Chippewa Indians, and that he is in part of Indian blood.

3. That said plaintiff is now and ever since the date of his birth has been an Indian ward of the Government of the United States, under the care and control of an Indian Agent of said government located upon said reservation, as aforesaid, and is now and has been at all times since his birth entitled to and received and is still receiving annuities from the government of the United States, and as such is entitled to allotments of land agreeably to the provisions of law and treaties of the United States.

4. That said plaintiff is a Chippewa Indian and lived in the State of Minnesota and became entitled to the benefits of
36 the Act of Congress approved January 14, 1889, entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," which act was duly ratified by a majority of the adult male members of the various bands of Chippewa Indians in the State of Minnesota, and is now being administered by the officials of the Department of the Interior of the United States.

5. That by treaty of April 18, 1867, between the United States and the Mississippi band of Chippewa Indians, whereby said White Earth Indian reservation was established, it was agreed that half breeds and mixed-bloods who actually live on one of the reservations among their people shall be participants in the annuities paid to such Indians, and that upon the allotment in severalty of the lands on said reservation of White Earth to the members of said Mississippi bands, each should receive one hundred and sixty acres of land; and by special acts of Congress provisions are made for the allotments of said land in severalty to the Indians living on the White Earth reservation aforesaid, of one hundred and sixty acres each.

6. That under said treaty of 1867 and the several acts of Congress relating to the same and passed subsequent to said treaty and particularly the acts of Congress of January 14, 1889, and of April 29, 1904, providing for additional allotments for the Chippewa Indians on the White Earth reservation, as aforesaid, said plaintiff is entitled to an allotment of land on said reservation of eighty acres in addition to the allotment of eighty acres already given him by the United States.

7. That the plaintiff, during the months of June, 1904,
37 and April, 1905, duly selected as the land to be allotted to him as an additional allotment to fill out the allotment of one hundred and sixty acres to which he was entitled under and by virtue of said treaty and said acts of Congress as aforesaid the following described land, to-wit:

The East half of the Northwest quarter of Section fifteen (15), in Township one hundred and forty-two (142), Range thirty-nine (39), and that said selection is situated within the boundary of the White Earth reservation in Minnesota.

8. That by the act of Congress approved February 6, 1901 authority is granted to "all persons who are whole or in part Indian blood or descent who are entitled to allotments of land under any laws of Congress, or who claim to be entitled to land under any allotment act or under any grant made by Congress, or claim to have been unlawfully denied or excluded from any allotment or parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, to commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper Circuit Court of the United States, and the Circuit Courts of the United States are given jurisdiction of such action, suit or proceeding." And the plaintiff herein brings this proceeding against the United States under and by virtue of said act.

That the said plaintiff did during the months hereinbefore set forth, duly applying to the United States, through its proper officers, including the Indian Agent of said United States at White Earth Agency, Minnesota, within the limits of which reservation said lands and all thereof are situated, and
38 to the Secretary of the Interior of the United States at Washington, D. C., to have allotted to him the above described lands and premises, and while said lands are now and were at the time the same were so selected as aforesaid by plaintiff and at the time the said United States was requested to allot said lands to plaintiff, to-wit, in June, 1904, and April, 1905, said lands and all thereof were situated upon the White Earth Indian reservation in the State of Minnesota, and were then and are now subject to allotment as aforesaid to Indians agreeably to the treaties and laws of the United States as aforesaid.

That although said plaintiff was duly entitled to an additional allotment of eighty acres from the United States at the time the above described lands were selected by him and demand upon United States, through its proper officers and representatives, that said above described tract be assigned

and allotted and set over to said plaintiff agreeably to the laws of the United States, and that said lands so selected and above described and all thereof were set aside by the government by its said laws for the purpose of being allotted to Indians which came within the class of which plaintiff is a member, and that said lands were not to be used or disposed of by the government of the United States for any other purpose than that of being allotted to Indians entitled thereto, said United States, through its officers and agents, did, in the month of June, 1907, prior to the commencement of this action, unlawfully refuse to allot said premises or any part thereof to plaintiff and unlawfully denied and excluded the plaintiff from any allotment of said land and every parcel thereof to which he claims to be lawfully entitled by virtue of said several acts of Congress and
39 treaties aforesaid, and does deny plaintiff the right to select said land or any part thereof as aforesaid, although the fact that plaintiff is legally entitled to have the said lands allotted to him is well known to the United States.

Plaintiff further alleges that the lands described in the complaint were duly allotted to plaintiff on April 24, 1905, and that thereafter and before the commencement of this action he has been unlawfully denied and excluded from said allotment and land, which he claims he was and is lawfully entitled to by virtue of the treaty and several acts of Congress referred to in the complaint in this action. (Amendment to the Complaint made at the trial on Stipulation and Order.)

Wherefore the plaintiff prays judgment against the defendant to the effect that this Honorable Court shall adjudge, order and decree that the plaintiff is entitled to select and have allotted to him the above described lands by him selected within the limits of the White Earth Indian reservation in the State of Minnesota, and have said premises patented to him as provided in the acts of Congress of January 14, 1889, and of April 24, 1904, providing for additional allotments for the Chippewa Indians on the White Earth Indian reservation aforesaid, also of February 8, 1887, (General Allotment Act) and the said treaty of 1867; together with such other and further relief as the Court may deem just and equitable in the premises.

GEORGE B. EDGERTON,
Attorney for plaintiff, 302 National German American Bank Bldg., St. Paul, Minnesota.

State of Minnesota,
County of Ramsey—ss.

Personally appeared before me, the undersigned Notary Public in and for the said County and State, Edward L. Warren,

who being duly sworn, deposes and says, that he is the plaintiff in the foregoing cause of action; that he has read the petition hereto attached; that the statements made in said petition as of his own knowledge are true, and that the statements
40 made therein on information and belief he believes to be true.

EDWARD L. WARREN.

Subscribed and sworn to before me this 5th day of June, 1907.

(Notarial Seal Ramsey Co., Minn.) E. S. EDGERTON,
Notary Public, Ramsey County, Minnesota.

My commission expires February 27, 1909.

Filed June 5th, 1907. Henry D. Lang, Clerk.

41 Affidavit.

In the United States Circuit Court for the District of Minnesota.

Edward L. Warren, Plaintiff,
vs. In Equity.
The United States, Defendant.

State of Minnesota,
County of Ramsey—ss.

George B. Edgerton, being duly sworn on oath, says that he is the attorney for the plaintiff in the above entitled action; that the original complaint in the above entitled action has been filed in said court; that on the 5th day of June, 1907, at the City of St. Paul in said Ramsey County, he personally served a copy of said complaint upon Honorable C. E. Houpt, United States District Attorney for Minnesota, by then and there handing to and leaving with him at his office in the postoffice building in said City of St. Paul, a copy of said complaint.

Affiant further says that on said 5th day of June, 1907, at the City of St. Paul, he duly mailed a copy of said complaint to the Attorney General of the United States at Washington, D. C., by registered letter, duly addressed to the Attorney General of the United States, Washington, D. C., postage prepaid, and deposited said letter, so addressed, in a sealed envelope, in the United States postoffice on said day at the City of St. Paul, Minnsota.

GEORGE B. EDGERTON.

42 Subscribed and sworn to before me this 6th day of June, 1907.

(Notarial Seal Ramsey Co., Minn.) E. S. EDGERTON,
Notary Public, Ramsey County, Minnesota.

My commission expires February 27, 1909.

Filed June 6th, 1907. Henry D. Lang, Clerk.

43 Appearance.

Circuit Court of the United States, District of Minnesota, 6th Division #53.

Edward L. Warren,
vs.
U. S. of America.

Appearance.

The Clerk will enter my appearance for the U. S. of America, defendant.

CHAS. C. HOUPT,
U. S. Attorney.

Filed July 8, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

44 July 8, 1907. #181.

Edward L. Warren, Complainant,
against
The United States, Defendant.

This day comes the defendant The United States, by Charles C. Houpt U. S. District Attorney, its solicitor on whose motion it is hereby ordered that the appearance of said defendant be and the same is hereby entered.

HENRY D. LANG, Clerk.
By L. A. Levorsen, Deputy.

45 Answer.

United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

Answer.

The defendant herein for its answer to the complaint of the plaintiff in the above entitled action,

First. The defendant admits the truth of the allegations as set forth and contained in Paragraphs One (1), Two (2), Three (3), Four (4), Five (5), and Six (6) of said Complaint.

Further answering said complaint the defendant alleges and shows to the Court that one Samuel E. Mooers is and was a Chippewa Indian residing upon the White Earth Reservation

and entitled to all the benefits and privileges accruing to him as such Indian under the Laws and Treaties of the United States relating to the Mississippi band of Chippewa Indians; that he is the father of one Alice Mooers a minor child, who likewise was and is entitled to such benefits and privileges.

That heretofore, to-wit: On August 8th, 1904, said Samuel E. Mooers for and on behalf of his said minor child Alice Mooers duly made application to the United States Indian Agent for an original allotment for said minor child under the Act of January 14th, 1889 of the East half (E½) of the North-
west Quarter (N.W.¼) Section Fifteen (15), Township
46 One hundred and forty two (142) North Range Thirty-
nine (39), being the same land mentioned and described in the complaint herein, and that thereafter and in conformity to law said land was duly allotted to said Alice Mooers. That thereafter and prior to April 24th, 1905 said allotment was erroneously cancelled by the Indian Bureau of the United States on the ground and for the reason that said land had been classified as pine lands. That under the ruling of the Indian Bureau then in force and effect all lands so classified, or lands chiefly valuable for the pine timber standing or growing thereon, should be reserved from individual allotment and to be held or disposed of for the common benefit of all the Indians of the reservation. That thereafter and following such cancellation the said land was allotted to Edward L. Warren the plaintiff herein.

That after the said allotment to the plaintiff the Commissioner of Indian Affairs reconsidering his former Order directing the cancellation of the allotment of said Alice Mooers on March 31st, 1906 instructed the United States Indian Agent to cancel said allotment to Edward L. Warren and again re-allot the land to said Alice Mooers.

That upon such instruction being received by the said Indian Agent he thereupon in compliance therewith did again allot said land to said Alice Mooers; that by letter of July 13th, 1906 the said Indian Agent was again instructed by the commissioner of Indian Affairs to reinstate said allotment to the plaintiff herein and to grant other tracts of land to said Alice Mooers under the provisions of the Act of January 14th, 1889.

That on April 23rd, 1907 the said Samuel E. Mooers on
47 behalf of his said infant child Alice Mooers duly ap-
pealed to the Secretary of the Interior from the said decision of the Commissioner of Indian Affairs of July 13th, 1906, which said appeal was duly heard by the Secretary of the Interior and on May 13th, 1907 the Secretary of the Interior

reversed the decision of the Commissioner of Indian Affairs and directed the allotment of said land to said Alice Mooers as her allotment under the provisions of the Act of January 14th, 1889 and upon rendition and filing of said decision the said White Earth Indian Agent was thereupon directed to allot other tracts of land on the White Earth Reservation to this plaintiff under the provisions of the Act of April 24th, 1904.

The defendant specifically denies that it has ever denied to said plaintiff his right to an allotment on said reservation other than as to the land herein described and as to such land it bases its denial of his right to an allotment therein on the ground that said minor child Alice Mooers had by prior and earlier application secured an equitable right and interest therein superior to the right of this plaintiff. The only ground and cause for the cancellation of the original application made in behalf of said minor child was that said land contained valuable pine timber and for that reason should be reserved for the benefit of the Chippewa Indians residing on said reservation. That this ruling of the Indian Bureau was void and unwarranted by the then existing state of the law relating to the affairs and property of said Chippewa Indians and in consequence of such erroneous ruling so reserving said pine lands from allotment the cancellation of said original application was without authority of law and void.

Further answering the defendant denies each and every allegation in said complaint contained save as hereinbefore
48 admitted, qualified or specifically denied.

Wherefore the defendant prays the judgment of the Court that the plaintiff take nothing by this action and that it be hence dismissed with its costs and disbursements.

CHAS. C. HOUPT,
United States Attorney for the District of Minnesota.

District of Minnesota,
Office of Clerk of
U. S. Circuit Court—ss.

Charles C. Houpt being duly sworn deposes and says that he is the United States Attorney for the District of Minnesota and attorney for the defendant in the above entitled action; that the foregoing answer is true of his own knowledge except-

ing as to such matters as are therein stated on information an belief and as to such matters that he believes it to be true.

CHAS. C. HOUPT,

Subscribed and sworn to before me this 6th day of August A. 1907.

(U. S. Circuit Court Seal) LOUISE B. TROTT,
(Dist. of Minnesota.) Deputy Clerk of U. S. Circuit Cour for the District of Minnesota.

Filed August 7th 1907. Henry D. Lang, Clerk. By L. A Levorsen, Deputy.

49 Stipulation.

United States Circuit Court, District of Minnesota Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

It is hereby stipulated and agreed by and between the plain tiff and defendant that the plaintiff have twenty days addi tional time to file and serve a reply to the answer of the de fendant in the above entitled action.

Dated August 21, 1907.

GEO. B. EDGERTON,
Attorney for Plaintiff

CHAS. C. HOUPT,
Attorney for Defendant

Filed Aug 23rd, 1907. Henry D. Lang, Clerk. By L. A Levorsen, Deputy.

50 Replication.

United States Circuit Court, District of Minnesota Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

This replicant, Edward L. Warren, saving and reserving t himself all and all manner of advantages of exception whic may be had and taken to the manifold errors, uncertainties an insufficiencies of the answer of the defendant, The United State of America, for replication thereunto saith that he doth an will aver, maintain and prove his said bill to be true, certain

and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

GEORGE B. EDGERTON,
Attorney for Plaintiff.
302 National German American Bank Bldg.,
St. Paul, Minnesota.

Filed, Aug. 24, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

51 Reply.

United States Circuit Court, District of Minnesota.
Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

Now comes the plaintiff and for reply to the answer herein denies each and every allegation and each and every part of each and every allegation of new matter in said answer contained, except what is hereinafter specifically admitted.

Admits that the said Samuel E. Mooers is a Chippewa Indian and the father of said Alice Mooers, a minor, who is nine years of age, no more.

That the pretended application of said Samuel E. Mooers for an allotment for his said minor child, claimed to be made on August 8th, 1904, was not made to the United States Indian Agent, but, on the contrary, the said pretended application was made during the absence of said United States Indian Agent from said reservation, and said pretended application was made to a clerk of said Agency, which clerk was not authorized by law, or otherwise, to make said allotment or receive such application, and the pretended allotment so made by said clerk was illegal and void. That said application was made without the knowledge or consent of the said United States Indian Agent.

Plaintiff alleges that thereafter and prior to April 24th, 1905, said pretended allotment, so made by said clerk, was cancelled by the Indian Bureau of the United States for the
52 following reasons: that said allotment had been improperly granted to said Alice Mooers, and that said land was pine land and chiefly valuable for the pine timber standing and growing thereon; and that there was a ruling of the United States Indian Bureau then in force and effect, that all lands so classified, or lands chiefly valuable for the pine timber standing or growing thereon, should be reserved from individual allotment and be held or disposed of for the common benefit of all the Indians of the said Indian Reservation.

Plaintiff admits and alleges that on the 30th day of June, 1904, he duly selected the said land, and on said day he duly applied to the United States Indian Agent at White Earth, in writing, for an allotment to him of said land so selected, and that the same was wrongfully refused; and on the 24th day of April, 1905, he again applied to the said United States Indian Agent for an allotment of said land to him, and that said land was then and there duly allotted to him, and the plaintiff took possession thereof under said allotment and selection.

That notwithstanding such settlement and occupancy and the selection so made, and the said allotment to this plaintiff, the Commissioner of Indian Affairs, disregarding such selection and allotment, wrongfully and unlawfully pretended to reallot said lands to said Alice Mooers, and wrongfully attempted to cancel said allotment which had formerly been made to this plaintiff, and wrongfully directed the United States Indian Agent on said Reservation to cancel said allotment and selection so made by this plaintiff, and wrongfully and unlawfully re-allotted said land to said Alice Mooers.

Plaintiff further alleges that said Samuel E. Mooers, at
53 the time he made said application to the said United States Indian Agent for said allotment for his said minor child, had actual knowedge and notice of the selection so made to plaintiff and the possession of said land by this plaintiff.

Plaintiff further admits and alleges that thereafter and on the 13th day of July, 1906, the Commissioner of Indian Affairs made another order directing the cancellation of said allotment so made to said Alice Mooers, and on July 13th, 1906, the said Indian Agent was instructed by the order of said Commissioner to reinstate the selection and allotment made to this plaintiff of said lands and to grant other tracts of land to said Alice Mooers.

Plaintiff further replying alleges that no appeal was ever taken from said order of allotment made by the Commissioner of Indian Affairs, dated Juy 13th, 1906, on Apriu 23, 1907 or at any other time, and alleges that if there was ever any appeal taken or hearing had before the Secretary of the Interior the same was had ex-parte and without any notice given to the plaintiff, or his attorney, or any other person for him; that the plaintiff and his attorney never had any notice or knowledge of any pretended appeal or hearing before the Secretary of the Interior, and never had any notice or knowledge of such pretended appeal until long after the pretended decision was made by said Secretary of the Interior in May 1907.

Plaintiff further alleges that the said order made by the Commissioner of Indian Affairs, dated July 13th, 1906, reinstating the allotment and selection made by this plaintiff to said lands is in full force and effect and that the pretended re-alloting of said lands to said Alice Mooers is wrongful and illegal and unlawful, and defendant wrongfully refuses to
54 allot said land to the plaintiff, as alleged in the complaint.

Further replying, plaintiff alleges that the said Samuel E. Mooers, long prior to August 8th, 1904, selected for allotment for said minor child, Alice Mooers other lands than those described in the complaint in this action and that prior to said August 8th, 1904, the said Samuel E. Mooers had improved the said lands so selected and had fenced the same, and on account thereof the said Alice Mooers was not entitled on said August 8th, 1904, or any time subsequent thereto, to have the lands described in the complaint allotted to her, or any other lands except those lands which had been selected and improved for her by said Samuel E. Mooers as aforesaid.

Wherefore, Plaintiff asks judgment of this Court as prayed for in his complaint.

GEORGE B. EDGERTON,
Attorney for Plaintiff.

State of Minnesota,
County of Becker—ss.

Edward L. Warren, being duly sworn, deposes and says, that he is the plaintiff in the above entitled action; that the foregoing reply is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

EDWARD L. WARREN.

Subscribed and sworn to before me this 11th day of September, 1907.

(Notarial Seal, Becker County, Minn) C. D. HOLMES,
Notary Public, Becker County, Minnesota.
My commission expires Aug. 1, 1914.

55 Endorsed: United States Circuit Court District of Minnesota. Sixth Division. Edward L. Warren Plaintiff, vs. The United States of America, Defendant. Reply. Due service of the within reply admitted Sept. 14th 1907. Chas. C. Houpt, Atty. for Deft. Filed September 14th, 1907. Henry D. Lang, Clerk.

56 Stipulation and Order.

United States Circuit Court, District of Minnesota.
Sixth Division.

Edward L. Warren, Plaintiff.
vs.
The United States of America, Defendant.

It is hereby stipulated and agreed by and between the attorneys of the respective parties to this cause that George B. Hillman, of the City of St. Paul, may be appointed special examiner to take the testimony orally of the witnesses whose evidence the parties desire to be adduced in said cause.

It is further stipulated that the Court may sign the annexed order appointing the said George B. Hillman special examiner to take said testimony.

It is further stipulated that said examiner may commence the taking of said testimony orally at White Earth Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day.

Dated September 19th 1907.

GEO. B. EDGERTON.
Attorney for Plaintiff.

CHAS. C. HOUPT,
Attorney for Defendant.

57 United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

Pursuant to the foregoing stipulation,

It Is Hereby Ordered that George B. Hillman, of the City of St. Paul, be and he is hereby appointed special examiner to

examine and take the testimony orally of the witnesses in said cause whose testimony the respective parties hereto desire to be adduced in said cause.

Dated September 19th, 1907.

WM. LOCHREN, Judge.

Filed Sept. 24th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

58 Notice.

United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

To Charles C. Houpt,
United States Attorney for the District of Minnesota and Attorney for the above named Defendant:

Please Take Notice that the plaintiff in the above entitled cause desires the evidence to be adduced in said cause to be taken orally.

GEORGE B. EDGERTON,
Attorney for Plaintiff.

Dated September 14th, 1907.

Filed Sept. 27, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

59 Order.

United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

It is hereby ordered that the time and place of the examination of witnesses in the above entitled cause, be fixed at White Earth, Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day.

Dated September 20th, 1907.

GEO. B. HILLMAN,
Special Examiner.

Filed Sept. 27th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

60 Notice.

United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

Honorable Charles C. Houpt,
Attorney for the above named Defendant:

Please Take Notice, that the Special Examiner appointed by this Court for taking the testimony orally of the witnesses in the above entitled cause has fixed the time and place for taking such testimony, to-wit, at White Earth, Minnesota, on the 27th day of September, 1907, at ten o'clock in the forenoon of said day, and that the examination of witnesses will commence at that time and place before the said examiner.

Dated September 23rd, 1907.

Very respectfully,
GEORGE B. EDGERTON,
Attorney for Plaintiff.

Filed Sept. 27, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

61 Stipulation.

United States Circuit Court, District of Minnesota, Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States of America, Defendant.

It is hereby stipulated and agreed by and between the respective parties to the above entitled action that the above entitled cause may be placed upon the calendar of the next General Term of the United States Circuit Court, Sixth Division, to be held at Fergus Falls on November 12, 1907, for trial without any other notice.

It is further stipulated that said cause may be brought on for trial before one of the judges of said court at St. Paul or Duluth, within 60 days, to suit the convenience of the court and the attorneys for the parties.

It is further stipulated that the copies of exhibits which shall be attached to the report of the Special Examiner shall have the same force and effect as evidence as if the original exhibits were attached thereto.

It is further stipulated and agreed that the plaintiff may at any time, if he so desires, amend his complaint substantially as follows: That the lands described in the
62 complaint were allotted to plaintiff on April 24, 1905, and that thereafter and before the commencement of this action he has been unlawfully denied and excluded from said allotment and land which plaintiff claims he was and is lawfully entitled to by virtue of the treaty and several acts of Congress referred to in the complaint in this action.

It is further stipulated and agreed that if said amendment be made, the evidence taken and reported before and by the Special Examiner, heretofore appointed, shall be received and considered the same as if taken and reported after said amendment, subject, however, to objections as to immateriality and irrelevancy.

Dated November 1, 1907.

GEO. B. EDGERTON,
Attorney for Plaintiff.

CHAS. C. HOUPT,
Attorney for Defendant.

Filed Dec. 25th, 1907. Henry D. Lang, Clerk. By L. A. Levorsen, Deputy.

63 United States of America, District of Minnesota,
Sixth Division.

Edward L. Warren, Plaintiff,
vs.
The United States, Defendant.

Annie Fairbanks by her guardian ad litem Benjamin F. Fairbanks, Plaintiff,
vs.
The United States, Defendant.

It is hereby stipulated that the evidence in the cases of Edward L. Warren vs. The United States and Annie Fairbanks vs. The United States may be taken together and be considered by the Court in the hearing to be had in each case; that the testimony may be taken by the Examiner in short-hand; that the signing of the testimony by the several witnesses is hereby waived; that the transcript of the evidence taken by the Examiner shall have the same force and effect as if signed by the several witnesses.

The hearing of testimony was commenced at the office of the Indian Agent at White Earth, Minnesota, on Friday, the 27th day of September, A. D. 1907, at 10 o'clock in the forenoon of said day, George B. Edgerton appearing as attorney for the plaintiffs and Charles C. Houpt, United States attorney, appearing for the defendant in said cases.

Simon Michelet, being duly sworn on behalf of plaintiffs,
64 testified as follows:

Examined by Mr. Edgerton:

Q. What official position do you hold under the government?

A. Superintendent and special disbursing agent of the White Earth Indians.

Q. How long have you held that position?

A. Well, I have held that title since the 1st day of January. Prior to that my title was United States Indian Agent.

Q. How long have you held that position?

A. I have held both positions continuously for about six years and three months.

Q. You are acquainted with the plaintiffs in these actions, are you? A. Yes sir.

Q. Are you acquainted with Samuel E. Mooers?

A. Yes sir.

Q. How long have you been acquainted with these people?

A. Well, since I came here, practically,—over six years.

Q. Were any applications for allotments filed in your office in June, 1904, by these plaintiffs or either of them for allotment?

A. Yes sir; both Fairbanks and Warren filed applications for allotment.

Q. Will you produce the original applications?

A. Yes sir. (Producing papers)

Q. Prior to this had each of these plaintiffs taken original allotments under the acts of 1887 and 1889?

A. Yes sir, they had.

Q. This paper has been identified as Plffs. Ex. 1 and is signed by B. L. Fairbanks, dated June 29, 1904. When was that filed here in your office? A. I think on that date.

Q. By Mr. Fairbanks? A. Yes sir.

65 It is stipulated and agreed that true and correct copies of any exhibits offered in evidence may be attached to the return of the Examiner and treated with the same force and effect as the original exhibits.

Plffs. Ex. 1 offered in evidence.

Q. What is this that I hold in my hand?

A. It is an Indian office letter of June 14, 1904, containing instructions, dated June 7, 1904, in regard to making allotments under the Steenerson Act, approved by the Secretary of the Interior June 10, 1904.

Q. When were those letters received by you?

A. In the ordinary course of mail. I have no record of that. They were received probably along the 17th of June, 1904.

Papers marked Plffs. Exs. 2 and 3 and offered in evidence.

Q. Now, Major, I hand you this paper with the two slips attached thereto. What are they?

A. Why, this is an application of Annie Fairbanks for an additional allotment, dated April 24, 1905.

Q. What are the two slips attached to it?

A. The first slip attached is simply a memorandum showing whether or not she had an original allotment and the number of it and the amount of acres. The second slip contains the description of the allotment and was the memorandum that Fairbanks had with him at the time he made the selection.

Q. In whose handwriting is Plffs. Ex. 5, this memorandum here?

A. George A. Morrison, formerly clerk of this office.

Q. In whose handwriting is Plffs. Ex. 6?

A. I would not want to say for sure, but I think it is in the handwriting of B. S. Fairbanks, the son of B. L. Fairbanks and a brother of Annie Fairbanks.

Q. In whose handwriting is the written matter in Plffs. Ex. 4?

A. This here is in the handwriting, I think, of Alex McDougal, clerk at this agency.

66 Q. When were Exs. 4, 5 and 6 filed here?

A. Filed here on April 24, 1905.

Q. What time in the day?

A. Oh, I do not know; some time in the afternoon of that day or about noon that day. I wouldn't want to say about that; anyhow it was about 11 o'clock of that day. We commenced alloting at 11 o'clock. Whenever he came in—some time after 11 o'clock that day.

Q. Who presented those papers Exs. 4, 5 and 6 to the office?

A. Well, B. L. Fairbanks presented Ex. 6, but Exs. 4 and 5 were made by the clerical force at the time of the alloting. These two applications were made by them at the time of the alloting.

Q. Ex. 6 is what he presented?

A. Ex. 6 is what he presented.

Q. On April 24, 1905, what was being done here at the Agency?

A. Allotments were being made under the Steenerson Act.

Q. Through you as Indian Agent here? A. Yes sir.

Q. Had you advertised that the alloting would commence on that day? A. Yes sir.

Q. Did the Indians line up here? A. Yes sir.

Q. When did they commence to line up?

A. Oh, they commenced lining up Sunday the day before.

Q. Do you know when Fairbanks got into line?

A. I think he got in line Sunday some time.

Q. When you commenced to allot, whereabouts was he in the line, if you know?

A. Oh, I couldn't say. He probably was in line about the number of this application—25.

Q. There were two rows formed? A. Yes.

Q. One composed of mixed bloods and one of the full-blood Indians? A. Yes sir.

Q. So that would make him about 12 or 13 in the line in which he was in, because he was a mixed blood?

A. Yes sir, that is correct.

67 Q. State whether or not he was the first that day to make application for the northwest quarter of the northwest quarter and southwest quarter of the northwest quarter of section 15, town 142, range 39 for his daughter Annie Fairbanks.

A. Yes he was the first to make application for that tract of land on that date.

Q. Benjamin L. Fairbanks? A. Yes sir.

Q. Father of Annie Fairbanks? A. Yes sir.

Q. Did anybody else on that day make application to have said premises allotted to him or her?

Objected to by defendant on the ground that there is no such issue raised under the pleadings.

A. Your question is hard to answer. It depends upon what would be considered an application. This is the only application that was filed—received. Of course there may have been lots of people came in after Fairbanks had selected this land and would say, "That is the eighty I want", and I would say, "That eighty has been allotted to somebody else", but this is the only application that was made and accepted.

Q. Do you know or remember of anybody else?

A. No, I do not.

Q. Did Samuel Mooers or anyone else make application for the allotment of said premises on that day to any one of his minor children?

Objected to by defendant because the testimony is not applicable to any issue made by the pleadings.

A. No, Mr. Mooers made no application for that land on that day, either for himself or anybody else.

Q. (Plffs. Ex. 7 shown witness.) What is that?

A. It is an application dated June 30, 1904, by E. L. Warren for an allotment of land under the Steenerson act.

68 Q. Was that ever received at the office here?

A. Yes sir, it was—received by mail.

Q. When?

A. Why, about that date or a little later, possibly next day; about that date anyway.

Q. Has Ex. 7 been on file in this office since its receipt?

A. Yes sir.

Q. I will ask you the same question in regard to Ex. 1: Has that been on file in this office since its receipt by you?

A. Yes sir.

Q. I will ask you this question: Prior to the receipt of said exhibits 1 and 7 had there been any applications to this office for the allotments of the land described in Exs. 1 and 7?

A. Well, they were vacant land at that time. I know of no application that had ever been made for them.

Q. And there is no record of any applications for them in the office here? A. No sir.

Q. And there was no attempt ever made to allot them prior to that time, was there, to any one? A. No sir.

Q. I show you these papers, these three; will you explain what they are.

A. The first one here is an application of Ed Warren, dated April 24 1905, for an additional allotment under the Steenerson act. The first memorandum attached is simply a memorandum of the office to ascertain (for information) whether or not he had an original allotment and the amount of the original allotment and his name as it appeared in the original allotment. The second slip attached is a memorandum by Mr. Warren showing the piece of land he desired to make application for.

Q. Is Ex. 10 in Mr. Warren's handwriting?

A. All that appears in black ink there I think is in Mr. Warren's handwriting. In red pencil, that is my hand-

69 writing.

Q. Whose handwriting is this on Ex. 9?

A. That is in the handwriting of George A. Morrison, the former clerk of this agency.

Q. Ex. 7 is signed by E. L. Warren, and that is his genuine signature, isn't it? A. Yes sir.

Plaintiff offers in evidence Plffs. Exs. 7, 8, 9 and 10.

Q. Now, you state that Exs. 8, 9 and 10 were filed in the office on the 24th of April, 1905; is that correct? A. Yes sir.

Q. Was Ed. Warren in one of the lines that you have mention heretofore? A. Yes sir.

Q. In which line was he?

A. He was in the mixed-blood line.

Q. And about where?

A. Well, about 11 or 12, somewheres along there.

Q. Was he close to Fairbanks in the line?

A. Yes I think they were right together, as I remember it.

Q. He applied about the same time of day that Fairbanks did, did he? A. Yes, about the same time.

Q. Did you allot the land to him that he applied for in this application? A. Yes sir.

Q. On that day? A. On that day.

Q. And on the same day did you allot to Annie Fairbanks, the plaintiff here, the land described in the Fairbanks' application on that day? A. Yes sir.

Q. I will ask you the same question in regard to this that I did in regard to the other. Did anybody else make application for this same land described in Ex. 8 in the Warren application on that day? A. No, not that I know of.

70 [—] Have you any other record in your office relating to these applications for allotments or any memoranda relating to them, any entries on your books in regard to them, anything besides what is on these papers?

A. Well, we have the stubs to those applications there.

Q. Where are they? A. They are here in the office.

Q. Will you produce them?

A. Yes, I can get them. Of course that contains the same information that that does. (Producing papers.)

Q. What is this I hold in my hand, Major?

A. Why, this is the stub to the application of E. L. Warren for an additional allotment under the Steenerson Act, dated April 24, 1905.

Q. Was Ex. 8 detached from Ex. 11? A. Yes sir.

Q. In whose handwriting is Ex. 11, the written part?

A. The written part here is in the handwriting of Alex McDougal.

Q. Was he clerk in your office?

A. He was a clerk in the office, yes sir, he is the chief clerk here.

Q. Under whose directions were these entries made by these clerks? A. Under my directions.

Q. And supervision? A. Yes sir.

Plffs. Ex. 11 offered in evidence.

Q. What is this stub No. 25, or paper?

A. That is the stub of application for an additional allotment dated April 24, 1905, of Annie Fairbanks.

Q. Was Ex. 4, the application of Annie Fairbanks, detached from that? (Ex. 12.) A. Yes sir.

Q. Was Ex. 12 made by the same clerk? A. Yes sir.

Q. And under your supervision? A. Yes sir.

Pltfs. Ex. 12 offered in evidence.

71 Q. Have you any other records in your office relating to these allotments?

A. Why, the only thing I have would be the schedule after it was made up. A schedule was afterwards compiled of all these allotments.

Q. In that schedule these lands appear to have been allotted to Annie Fairbanks and Edward L. Warren?

A. Yes sir, and then the cancellation in accordance with the last instructions appear on that schedule.

Q. Excepting those schedules and subsequent entries of cancellation, there is nothing more? A. No sir.

Q. In the records of this office?

A. No, except correspondence that we have.

Q. But I mean so far as the records of the office are concerned? A. No, that is all.

Q. Now, you refer to cancellations; what do you mean by that?

A. Why, I received instructions from the Department to cancel the allotments of Annie Fairbanks and Edward Warren.

Q. When?

A. Well, I have a letter here dated March 31, 1906.

Q. I will pass the letter for the present and ask you this: In making the allotments on the 24th day of April, 1905, did you act in good faith?

Objected to by defendant as incompetent, irrelevant and immaterial, not affecting the rights of the parties in this controversy.

Q. Did you act in good faith in making those allotments?

A. Yes sir, I did.

Q. How long after that was there any question raised as to the validity of those allotments to Warren and Annie Fairbanks?

A. The first intimation that I had of it was when I received a letter of the Department dated February 20, 1906.

72 Q. Did you receive any instructions to cancel these allotments to Warren and Annie Fairbanks?

A. Yes sir, I did.

Q. If so, when?

A. I received a Department letter dated March 31, 1906.

Q. Now after you were instructed by the Department, under letter dated March 31, 1906, to cancel the allotments to Annie Fairbanks and Warren, will you state what was done, if anything, in regard thereto?

A. I did not cancel the allotments but wrote to the Department that I had informed Fairbanks and Warren of the Department letter and told the Department that Fairbanks and Warren had requested me not to act under the instructions until I had first written the Department asking the department to hold the matter in abeyance until they could be heard.

Q. After that was there an investigation here and evidence taken?

A. Yes sir, there was; after that the inspector was sent here.

Q. What was his name? A. His name was Churchill.

Q. Sent here by the Department of the Interior?

A. The inspector was sent here by the Secretary of the Interior.

Q. Did he hear the testimony of both sides to the controversy?

Mr. Haupt: The government objects to any testimony on the part of this witness or any witness relating to any investigation made of the questions by an inspector or any other person as immaterial, incompetent and irrelevant because such investigation can in no way affect this action now having been brought before the Court for its determination.

A. Well, I just know in a general way. I know there was such an investigation, and I know witnesses were there but what they testified to, I don't know.

Q. No, I didn't want to go into that; I ask you if there was an investigation held here at this office before Mr. Churchill?

A. It was not held exactly at this office. He held it
73 wherever he wanted to take testimony. He took testimony at different places and he carried on the investigation in his own way and I was not a party to it in any way; that is, I don't know what transpired except I know they had an investigation.

Q. Subsequent to that investigation did you receive a letter or order from the Commissioner of Indian Affairs, dated July 13, 1906, relative to these allotments of Warren and Annie Fairbanks?

A. Yes sir, I received a letter from the Indian office relating to the Fairbanks and Warren contest and the Mooers.

Q. Have you got it there?

A. Yes sir, I have it here. This is not the letter but it is a true and correct copy of the original letter of July 13th.

Plffs. Ex. 13, being letter dated March 31, 1906, from the Commissioner of Indian affairs, offered in evidence; also Plffs. Ex. 14, letter dated July 13, offered in evidence.

Objected to by defendant on the ground that they are simply departmental letters which are not evidence in this proceeding, which can have no bearing upon the ultimate decision in this case; that the only material part of evidence of that nature is the ultimate action of the Department in cancelling the allotments previously made to Warren and Fairbanks.

Q. Plffs. Ex. 13, being a letter of March 31, 1906, is a letter from the Indian office, isn't it?

A. From the commissioner or someone who signs for him, for the Indian office.

Q. It was either the Commissioner or the acting commissioner?

A. Yes sir, he was the Commissioner or the acting Commissioner.

Mr. Edgerton: I offer in evidence certified copy of letter of the Secretary of the Interior dated June 29, 1906,
74 addressed to the Commissioner of Indian affairs, being Plffs. Ex. 15.

Objected to by defendant because it is not evidence and is not relevant to the issues made by the pleadings in the cases now pending in court. Objected to as incompetent, irrelevant, and immaterial. We make no point as to incompetency on the ground that it is a certified copy.

Q. These two claims applied for by Warren and Fairbanks are what, in regard to whether agricultural or timber land?

A. They are timber lands, pine lands.

Q. Classified as pine timber lands?

A. Yes sir. I do not know what you mean by the word "classify. That is what they are. You dont mean classified on the record, do you?

Q. As distinguished from agricultural lands, they are timber lands? A. Yes sir.

Q. Has the government had those estimated?

A. Yes sir, they have.

Q. About what estimates are on those claims?

A. I wouldn't want to say unless I get the estimate and testify from that.

Q. Will you get those?

A. Annie Fairbanks, northwest quarter of the northwest quarter contains 400,000 feet of white pine; the southwest of the northwest contains 500,000 feet of white pine.

Q. Now, in regard to the other—Warren.

A. The northeast of the northwest contains 300,000 feet of white pine, and the southeast of the northwest contains 400,000 feet of white pine.

Q. Now, you have a letter on file here, haven't you, from the Department in regard to the alloting of pine timber claims?

A. Yes sir, I have got a letter from the acting Commissioner of Indian affairs, dated August 31, 1892, addressed to Hon. Darwin S. Hall, Chairman of the Chippewa Commission.

The same was marked Plffs. Ex. 16 and offered in evidence.

75 Cross-examination

By Mr. Haupt.

Q. Do you know one Samual E. Mooers?

A. Yes, I know Samuel Mooers.

Q. Does he appear upon your rolls as a Chippewa Indian?

A. Yes sir, he does.

Q. And draws annuities as such? A. Yes sir.

Q. And is a resident of the White Earth Indian reservation?

A. Yes sir, he is.

Q. Are you acquainted with his two children Lewis Mooers and Alice Mooers?

A. I am not personally acquainted with the children but I know of them.

Q. You know of them? A. Yes sir.

Q. They also appear upon your rolls as Chippewa Indians and members of the tribe and reside upon the reservation?

A. Yes sir.

Q. And draw annuities? A. Yes sir.

Q. Do you know J. E. Perrault? A. Yes sir.

Q. Was he, in the years 1904, 1905 and 1906, a member of your office force here in the agency on the reservation?

A. Yes sir, he was assistant clerk.

Q. And did he have charge of the allotment rolls as assistant clerk during that time? A. That was part of his work.

Q. On August 8, 1904 did Samuel E. Mooers an behalf of his two minor children Lewis and Alice present an application for an allotment to them of the lands here in controversy? A. Yes sir, he did.

Q. Have you that application??

A. Yes sir, I have it here. (Produced.)

Mr. Haupt: I offer in evidence Deft. Exs. A and B being respectively application for allotment and the corresponding allotment stub, made by Samuel E. Mooers August 8,
76 1904. Exs. A and B are applications for an allotment to Lewis Mooers. I also offer in evidence

Defts. Exs. C and D, being respectively, stub and application for allotment by Samuel E. Mooers on behalf of his daughter Alice Mooers.

Mr. Edgerton: I accept a memoradum as to ages shown on Exs. C and B. as showing the correct ages of Alice Mooers and Lewis Mooers, minor children of Samuel E. Mooers.

Q. Major, these applications of the Mooers for the allotments of the lands in controversy were acted upon by the clerk J. E. Perrault? A. Yes sir.

Q. And on what day were the lands allotted to Alice and Lewis Mooers?

A. Well, the application was all there was of it. They made the application on that day, as stated in this application, August 8 1904.

Q. Wasn't there some action taken on those applications?

A. No action taken excepting that the applications were received by him.

Q. When application is filed here is there no entry of it made in any book that you have?

A. No sir, except the application book. It is made in the application book and then whenever the schedules are made up, they are made up in schedule form. The government keeps no book in which any entries of any kind are made in regard to these Indian allotments.

Q. What do you mean by entry in application book.

A. That means that book right there (pointing to stub book)

Q. It there any other paper filed in your office in connection with applications of August 8, 1904 other than what appears in the Exs. A, B, C and D?

A. No sir that is the only thing. The only other possible thing that is done is that we have a plat of all the lands, and of course that is made up and a note would be made on that plat that that land had been applied for by somebody so that it would not appear on that plat as vacant after that,

77 but that is the only record that is kept.

Q. Then the exhibits A, B, C and D of themselves are sufficient to show an allotment of that land to the parties named in there as Allottees?

A. It would show the selection of the allotment; it would show that they had made selections of those particular tracts and that would be marked as being applied for on the plats.

Q. Then the party, Samuels E. Mooers acting on behalf of his minor children did all that he could do to secure these lands as an allotment for his children?

A. Yes sir, he did everything that he could do.

Q. So far as your record show, these parties, Alice and Lewis Mooers were eligible to receive allotments at the time of the filing of the applications on August 8, 1904?

Objected to by Plaintiff as irrelevant, immaterial and incompetent, calling for a conclusion of law and of the witness.

A. Yes sir.
Q. You afterwards cancelled those allotments?
A. Yes sir.
Q. For what reason did you cancel them?
A. Why, I was informed by one of the clerks in the office that the allotments applied for by Mooers were solid pine allotments and that was our principal reason for cancelling them.
Q. Wasn't it your only reason for cancelling them?
A. No, I had no other reason for cancelling them, but that is what caused me to do it, but I had another reason and that was that Mr. Mooers had 160 acres of vacant land adjoining or close to his farm down there fenced in and was using the same, and the agency plat showed that those two eighties were being held for Mr. Mooers to be taken as allotments for those children.
Q. Mr. Mooers had never applied for those allotments, had he?
A. He never had applied to me. No, I never had any talk with Mr. Mooers about it, but that is what the agency plats show.
78 Q. Mr. Mooers never authorized you to make your agency plats show any such state of facts?
A. Well, I think that existed before I came here. I think they were on the plats. Those names were on the plats before I came here. I never put them there and he never authorized me to or asked me to.
Q. And the only record Mr. Mooers had ever filed in your office, showing a purpose on his part to get allotments for these particular children, were these applications of August 8, 1904?
A. That is all, except as I stated, on the plats. He never made any other application to me.

Mr. Edgerton: You mean personally?

Witness: Of course I mean personally.

Q. If it had been reported to you that these were pine lands, you would not have cancelled these applications?
A. No sir, I don't think I would.

Mr. Edgerton: That is objected to as immaterial, irrelevant and incompetent.

Q. What was the date of your cancellation on the applications of August 8, 1904?

A. I couldn't testify as to the exact date. It was probably some two or three weeks after the application had been made

Q. It was some time then during the month of August 1904, that they were cancelled?

A. Sometime during that month. I instructed Mr. Perrault, the clerk, to cancel the allotments and to notify Mr. Mooers and I replied on him that he had carried that out, and he should have placed the date of cancelation on.

Q. Does your office have any record of any notice to Mr. Mooers of the cancellation of these allotments?

A. No sir, I have no record except as—

Q. You don't know, then, of your own knowledge that Mr. Mooers ever received any direct specific notice of the can-
79 cellation of his allotments, do you?

A. No sir, I do not; not of my personal knowledge I do not.

Q. Generally speaking, is that the rule of your office to give a notice to the allottees of a cancellation of his allotment?

A. Well, I would always [illegible] that, yes sir.

Q. Is that notice in writing?

A. It should be.

Q. And that is a rule of your office?

A. Well, there is no rule governing it but that would be the natural course to pursue. That was my instructions to the clerk, to notify Mr. Mooers of the cancellation.

Q. Now, Major, you stated that you cancelled these allotments to the Mooers children mainly on the grounds that the lands applied for were pine lands? A. Yes sir.

Q. And your action there was based on the letter that has been introduced in evidence as Ex. 16? That is the letter from the Acting Commissioner of Indian affairs to Darwin S. Hall, chairman of the Chippewa Commission? A. Yes sir.

Q. At the time of the cancellation of the allotments you had not taken into consideration that the Steenerson act of April 28, 1904, was a statutory revocation of that letter, had you?

A. No sir, I had not.

Q. Now, calling your attention to the applications of Fairbanks and Warren of June 29th and June 30, 1904, respectively, were those applications presented at the office personally by these parties, do you recall?

A. I think in Fairbanks case it was. I think in Warren's case it came by mail; that is my recollection of it.

Q. You had been living on the reservation for how many years prior to June 30, 1904?

A. About four years.

Q. Plffs. Ex. 3 introduced in evidence is the approved letter from the acting Commissioner of Indian Affairs directing you to make allotments under the Steenerson Act, is it?

A. Yes sir.

80 Q. This letter contains this provision: "As you will note the act provides that if there is not sufficient land on the diminished White Earth reservation subject to allotment to give each Indian entitled thereto 160 acres, then the lands shall be pro-rated among those entitled to allotments. It will therefore be necessary for you to first determine, so far as you can, by computation, whether there will be land enough on the diminished reservation to give each Indian entitled thereto an allotment of 160 acres." Now on receipt of this letter did it become necessary for you to ascertain the quantity of land still subject to allotment and also the number of Indians who were entitled to those additional allotments?

A. Yes sir.

Q. Then on the receipt of this letter and in obedience to its instructions the conditions were such that you could not at once begin making allotments, could you?

A. No sir, I didn't consider it so that I could begin.

Q. Did you have any correspondence with the Department on that phase of the allotment question?

A. Yes sir; that is, I had some correspondence that would lead to that phase of it.

Q. Did you have any correspondence with the Department authorizing or directing a postponement of the time when allotments should begin?

A. I don't think there was any correspondence of that nature. I can state what the correspondence was.

Q. Well, you may state the substance of it.

A. Well, the question arose as to whether the Otter Tail Indians should participate in these additional allotments under the Steenerson act and they sent in and protested to the Department, as I remember it,, claiming that they were to participate, and the Department referred it back to me to submit it to the Mississippi Indians as to what they had to say on it, and then the statement of the Mississippi Indians and the Otter Tail Indians were submitted to the Department and by the Department to the Attorney General for an opinion as to

81 whether or not they were entitled under the law to participate. And then, as a matter of course, I made no allotments; I let the thing rest (That would be my natural thing to do,) until that controversy was first settled.

Q. And when was that controversy settled?

A. That was settled on October 31, 1904.

Q. About how many of these Otter Tail Indians were there at that time that entered into this controversy?

A. Oh, roughly speaking, there were six or eight hundred.

Q. And until that controversy was settled, it was impossible for you to say how many Indians there were who were entitled to participate in the benefits of the Steenerson act?

A. Yes sir.

Q. When did you first determine on April 24, 1905, as the inauguration of allotments under the Steenerson act?

A. Why, I determined on that about six weeks I think, before I began the alloting. I set the date as April 24th, about six weeks before I began the alloting.

Q. How long previous to the allotment day did you publish notice of the date fixed on?

A. About six weeks. As soon as I determined on the date, I published it and sent out notices.

Q. Before you determined on the date had you made any publication of the fact that allotments would not be made until a day had been fixed and notice given?

A. No, I did not. I didn't either give any notice that there was any to be made or that I wouldn't make any, just my instructions simply laid until the matter was determined. No notice was ever given that I would make allotments until the notice I set as April 24, 1905.

Q. Did you notify parties applying to make allotments that applications would not be received until a definite time had been fixed?

A. I notified parties who made application that I wouldn't make any allotments under them.

82 Q. That was applications made under the Steenerson act? A. Yes sir.

Q. Did you notify Mr. Warren and Mr. Fairbanks?

A. Yes sir.

Q. Did the Department approve, in any formal manner, or in writing, of your action in delaying the making of the allotments and of the fixing of a time and then giving notice of the time and the manner in which you did the work?

Objected to by Plaintiff as immaterial and incompetent.

A. Well, I simply went to work and did that under my instructions and all of the allotments that were made under that I understand have been approved and the matter has been finally gone over several times, and while that phase of it did not come up in just the way you are asking that question, still it has had that effect, that they approved of that action.

Q. It has had the general approval, then, of the Department of the Interior, by accepting of your work, you mean?

A. Yes, the question has never arisen in the way that you put it, you know, but it is not necessary that there should be any formal—

Q. In the administration of the allotments under the Steenerson act, in your opinion, was it necessary to proceed in the manner in which you did?

Objected to as immaterial and irrelevant.

A. I considered that the fairest manner of doing it.

Q. Could you have proceeded under the instructions contained in Ex. 3 otherwise than you did proceed?

Objected to as immaterial and irrelevant.

A. Well, I could have gotten up a different plan, of course, of doing it by lottery or some other way but I considered this the best.

Q. No, but I mean in delaying the time when you would begin making allotments?

A. Could I have done it in any other manner?

Q. Was it necessary under the instructions of the Secretary as contained in Plffs. Ex. 3, to delay the time when allotments would begin?

83 Same objection by plaintiff as last above.

A. To act satisfactorily and intelligently it was necessary for me to delay. I didn't know who were to participate or how many until these questions were determined.

Q. And until the question was determined of how many were to participate, you didn't know or could not know whether you should give each Indian his full quota of 160 acres or whether you would have to pro rate? A. I didn't know.

Q. So in order to ascertain that fact, it was necessary to delay the time when allotments should begin? A. Yes sir.

Q. And that was the construction you placed upon the Secretary's letter, this plffs. Ex. 3 of June 7th?

Same objection.

A. Yes sir, that was my view of it.

Q. And that view has been concurred in by the Department for the reason that no objection has been raised to it, and they have accepted of your work under that view?

Objected to by plaintiff as irrelevant and immaterial.

A. Yes sir.

Q. As I understood your testimony concerning applications of August 8, 1904, they were regular in form, and the only objection made against them was that the land was pine land?

A. That is the only objection, qualified as I stated before there.

Re-direct Examination

By Mr. Edgerton:

Q. Now, Major, as a matter of fact, you knew how many Indians there were that would be entitled to allotments provided the Otter Tail Indians were entitled to allotments?

A. Yes, I knew approximately, provided they were al-
84 lowed to participate.

Q. Yes, provided they were allowed to participate. Wasn't there enough land on the reservation to give, if they were allowed an allotment, an additional allotment, to each Indian entitled to it, including the Otter Tail band?

A. Yes, there was enough land. That was a close question.

Q. But there was enough?

A. Yes sir, they were finally allowed to participate and there was enough land for them.

Q. Now, I will ask you if you didn't write to Mr. Mooers a letter under date of February 15, 1905, (which I will mark Plffs. Ex. 17) which Mr. Mooers admitted to have received in the investigation made at this office before Inspector Churchill, which reads as follows:

I am closing up the allotments of land to Indians who have not yet received their first 80 acres and notice that some of your family have not been allotted. You are therefore requested to call at this office and enter the tracts necessary to complete the allotments to your family, such selections to be made from the vacant agricultural lands on this reservation. Should you neglect to attend to this matter before April 1, 1905, I will be compelled to complete this allotment myself as provided by the General Allotment Act, and the selections I make will have to be final although they may not prove to be the tracts that you desired.

(Signed) SIMON MICHELET,
U. S. Indian Agent.

A. Well, I will state that that was not a particular letter to Mr. Moore; that is, that that was not gotten up for Mr. Mooers particularly. That was a general letter that I got up and sent to all persons who had failed to take their allotments. I sent one to Mr. Mooers and one to every other person who had failed to take their allotment. It was

a general letter that I got out to all. It was a circular office letter to all persons who had failed to take their lands, but I sent this to Mr. Mooers.

Q. And that in addition to your directions to Mr. Perrault about two or three weeks after August 8, 1904, to notify him that his applications were cancelled? A. Yes sir.

Q. You received a letter dated May 18, 1907, didn't you?

85 A. From the Department?

Q. Yes sir. A. Yes sir.

Q. Will you produce that?

Letter produced marked Plffs. Ex. 18.

Q. What is that letter Plffs. Ex. 18?

A. It is a letter from the Indian office directing me to cancel the allotments of Annie Fairbanks and Edward Warren and to allot the lands to Alice and Lewis Mooers.

Plffs. Ex. 18 offered in evidence.

Q. Major, what is this paper you have here?

A. Well, I have not finished that yet. These are the allotments to the Mooers family under the act of 1889.

Q. By looking at that memorandum there, can you tell us who were entitled in the Mooers family to allotments?

A. Under which act?

Q. Who were entitled before the beginning of January, 1904, in the Mooers family prior to April 28, 1904?

Objected to by defendant as incompetent, irrelevant and immaterial, except as to the two children Alice and Lewis, because what rights the other children may have had and what allotments they may have received or had not received, as immaterial in this case.

A. I don't know what you are getting at, but all of the Mooers family had received all the allotments they were entitled to up to say January 1, 1904, except Alice Mooers and Lewis D. Mooers, the two minor children of S. E. Mooers.

Mr. Edgerton: Are you willing to admit that so as to save a lot of records here?

Mr. Haupt: I will admit that, subject to my objection that it is incompetent, irrelevant and immaterial.

Recess till 2 p. m.

It is stipulated between the respective parties, subject to

86 objection as to materiality or relevancy of the testimony, that if Samuel Trask were present he would testify as follows: That he came to the White Earth reservation in the

year 1896 and during said year went to work for Samuel Mooers as a farm laborer, and that he knows from personal knowledge that the said Samuel Mooers, about two years after he began working on said place, the said Samuel Mooers built a large pasture by fencing in a large tract of land directly south of the farm of the said Samuel Mooers, and that the land so fenced is, according to the best judgment of deponent, about 200 acres; that he helped build the fence and knows all about the facts from personal knowledge, and that there is a lane running from the house of said Samuel Mooers to the said pasture through which milk cows were driven back and forth by deponent; that the fence is a substantial wire fence with oak and tamarack posts, and that he knows from personal knowledge that there was some land broken up on the land within the said pasture, a strip about twenty feet wide and eighty rods long.

The same thing is stipulated in regard to the testimony of Samuel Sloan, that if present he would testify as follows: That he is a member of the Mississippi band of Chippewa Indians; is a resident of the White Earth reservation, Minnesota; that on or about the 1st day of August, 1899, he secured plats of vacant land on said reservation from the Chippewa Commission and went out to look over said vacant lands with the view of and for the purpose of selecting an allotment for himself under the provisions of the Act of 1889; that his said plats showed vacant lands in Section 18, Township 141 North, Range 42 West, which he went to look over, and that said land lay south and joined the land on which one Samuel Mooers had his house; that he asked the said Samuel Mooers about the land and he was told by the said Samuel Mooers that the land belonged to his children and was not vacant land; that the
87 said Samuel Mooers showed him a strip of plowed land running through the two eighty-acre tracts from east to west; that he came back and reported the matter to the Chippewa Commission.

Mr. Haupt: I want to interpose a special objection right there. The offer of the testimony of Trask relating to the Chippewa Commission is objected to on the ground of hearsay, and that Trask not being a party to this action makes it immaterial, on that ground as well.

Mr. Edgerton: (Continuing): And that he was given to understand by said commission that the said improvements would hold.

Q. Major, Is Mrs. Samuel E. Mooers a Chippewa Indian?
A. No, she is not.
Q. She is a white woman, is she? A. She is a white woman.

Q. Now, of the Samuel E. Mooers family who were entitled to allotments?

Objected to by the defendant except so far as it relates to Lewis and Alice Mooers, the parties mentioned in the pleadings in the action, on the ground that whatever may have been done with reference of the other children of Mooers taking allotments would not prejudice the rights of these two minor children.

A. What do you mean by that—original and additional allotments?

Q. Yes, start in with the originals.

A. Samuel E. Mooers was entitled to allotment and has received 160 acres prior to the passage of the Steenerson Law, and therefore was not entitled to any allotment under the Steenerson Act. Edward S. Mooers, a son of Samuel Mooers, received 160 acres prior to the passage of the Steenerson Act and was not entitled to participate under the Steenerson Act; and he died December 12 1902.

Q. He must have been of age, then?

A. I do not know. He died December 12 1902, his age does not show here, and Daniel S. Mooers received his 160 acres before the passage of the Steenerson Act and was not entitled to additional allotment. Elsie L. Mooers received 80 acres under the original allotment Act and was entitled to 80 acres under the Steenerson Act. Charles E. Mooers received
88 80 acres under the original allotment act and was entitled to 80 acres under the Steenerson Act. Alice Mooers and Lewis D. Mooers were entitled to original allotments and additional allotments at the time of the passage of the Steenerson Act. They made no selection of either original or additional allotments—no applications.

Q. After the passage of the Steenerson Act was there any of the Mooers family entitled any land except Alice and Lewis?

A. Yes; Charles E. and Elsie L.; they were both entitled to allotments.

Q. Were allotments made to them under the Steenerson Act?

A. Yes sir allotments had been made to them under the Steenerson A

Q. What land has been allotted to them?

A. Well, Charles E. Mooers was allotted the southeast of the northwest and the southwest of the northeast of 33, Township 142, Range 39; and Elsie L. Mooers was allotted the east half of the southwest of 33-142-39.

Mr. Haupt: May it be understood that all evidence relating to allotments by any of the Children of Samuel E. Mooers, except Lewis and Alice, may be considered objected to as incompetent, irrelevant and immaterial and for the reason that

such allotments made to other members of the family cannot be used to prejudice the rights of these two minor children named in the pleadings in this action?

Mr. Edgerton: Yes.

Mr. Haupt: And be deemed excepted to.

Q. What land did Samuel E. Mooers take under the Act of 1889?

A. Lot 4, the south half of the southwest and the southwest of the southeast of section 7, township 141 north of range 42 west, containing 161.39 acres.

Q. And what land did Elsie L. Mooers take under the Act of 1889 before the passage of the Steenerson Act?

A. She took the northwest of the southeast and the northeast of the southwest of section 6 township 141 range 42, eighty acres.

89 Q. What did Daniel S. Mooers take?

A. Daniel S. Mooers took Lot 3, North half of the southwest and the southwest of the northeast of section 7, township 141, range 42 containing 161.39 acres.

Q. What did Edward S. Mooers take?

A. He took the north half of the south east of 28-142-42 and the northwest of the southwest and the southwest of the northwest of section 27, township 142, range 42, containing 160 acres.

Q. And Charles E. Mooers?

A. Charles E. Mooers took the northeast of the northwest of section 7-141-42 and the southeast of the southwest of section 6, township 141, range 42 containing in all eighty acres.

Q. What do your record show as to the ages of Elsie L. Mooers and Charles E. Mooers?

A. Elsie L. Mooers was three years old in 1889 and Charles E. Mooers—no age appeared on that. I suppose he was born during the time the census was taken. No age appears on our record for that year, except I have here at another place, where his age shows about 8 years old in 1905.

Mr. Haupt: Then he was born in 1897?

Witness: 1897. Of course this information was not collected with the view of getting the age. We could get that from the roll more accurately.

Mr. Edgerton: There is no question made about that, is there, Mr. Haupt?

Mr. Haupt: No. I have not been able to penetrate the reason of the testimony you are taking now.

Q. Now, after the passage of the Steenerson Act, what allotments did you make to the Mooers family?

A. After the passage of the Steenerson Act additional allotments were made to Charles E. Mooers, southeast of the northwest and southwest of the northeast, 33-142-39, eighty acres; Alice Mooers, east half of the southeast of 28-145-42; Lewis D. Mooers, Lot one and the southeast of the north-
90 east of 2-142-39; Elsie L. Mooers, the east half of the southwest of 33-142-39; that is under the Steenerson Act. Four allotments made under the Steenerson Act.

Q. Did you make any allotments under the 1889 Act?

A. Yes sir.

Q. What were they—to whom?

A. Alice Mooers was allotted the west half of the southeast of 28-145-42 and Lewis D. Mooers was allotted the east half of the southeast of section 2-142-39.

Q. When were those allotments made?

A. Alice Mooers was allotted May 15 1905.

Mr. Haupt: Are you speaking now about the 1889 Act?

Witness: Yes sir. Lewis Mooers was allotted May 15 1905.

Q. (Witness shown Plffs. Exs. 19 and 20) Ex. 20 is an application for an allotment, isn't it, and Ex. 19 is the stub attached thereto? A. Yes sir.

Q. Exs. 19 and 20 are records of your office, are they?

A. Yes sir.

Q. Exs. 21 and 22 (To Lewis Mooers) are records of your office and purport to be an application and stub attached thereto, made by Samuel E. Mooers for his minor child Lewis Mooers?

A. Yes sir.

Q. Have those four exhibits 19, 20, 21 and 22 been a part of the records of your office ever since the date of them?

A. Yes sir.

Q. Have you any application made by Mr. Mooers for these same children on May 17, 1905? A. For additional allotments?

Q. Yes. A. There is the application for Lewis D. Mooers.

Q. Are Exs. 23, 24, 25 and 26 part of the records of your office? A. Yes sir, they are.

Q. And how long have they been?

A. Since the date thereof.

Q. May 17, 1905? A. Yes sir.

Q. Now, will you please go on and explain how the last eight exhibits came to be made out at the time they purport to have been written?
91 A. Lands were selected by Samuel E. Mooers, the father of these minors.

Q. On May 15, 1905, did he select for these children the land described in Exs. 19, 20 21, and 22?

Mr. Haupt: The defendant objecte to any testimony relating to selections made by Samuel E. Mooers under the Act of 1889 subsequent to the selections of August 8, 1904, as incompetent, irrelevant and immaterial and for the reason that the action of Samuel E. Mooers in making these selections cannot prejudice or defeat any rights of the children Alice and Lewis to the land in controversy arising from the selections first made August, 1904.

A. Yes sir, he did.

Q. What conversation if any did you have with him in regard to those allotments of May 15th and 17th?

Mr. Haupt: Any conversation had between the witness and Samuel E. Mooers on the 15th day of May, 1905, or at any time subsequent to the allotment of August 8, 1904, is objected to as incompetent, irrelevant and immaterial, for the reason that Samuel E. Mooers could not prejudice or defeat any rights acquired by Alice and Lewis Mooers under that selection, by any act, word or conduct on his part.

A. Well as nearly as I can remember the conversation that I had with Mr. Mooers, he came here to make his selections ot his allotments. I told Mr. Mooers at that time that I had been told that Joseph Perrault had given him some plat or something of that nature covering the allotments of August 8, 1904 and that I had heard that he was to make some kind of a contest regarding the same; and I asked him if there was any truth to it and he said that there was no truth to it. And I asked him to return the plats to this office, and he said he would do so, and later came to me and said that he didn't have that plat that it had been lost or destroyed, and that he didn't have it,
92 but he said it didn't make any difference because he had made the selections of the lands that he wanted for his minors. That is as close as I can remember it, words to that effect.

Q. Major, Michelet, are any of those tracts that have been selected by Mr. Mooers for his children covered by pine timber, known as pine-timber tracts?

A. Of which allotments?

Q. Any of these allotments subsequent to the passage of the Steenerson Act or before?

A. Well, the additional allotments of Charles E. Mooers is a timber allotment; the additional allotment of Lewis D. Mooers is a timber allotment; the additional allotment of Elsie L. Mooers is a timber allotment.

Q. Any others?
A. I think that is all, those three allotments.
Q. What is the estimated value of the pine timber on those allotments?

Objected to by defendant as incompetent, irrelevant and immaterial.

A. I could not testify to the estimated value of them.
Q. Haven't you got a record here of it?
A. I have got no record of the value, no.
Q. I mean of the feet.
A. Well, I could give what our record shows. The southeast of the southwest has got 450,000 feet of white pine; the northeast of the southwest has got 600,000 feet of white pine; the southeast of the northwest has got 500,000 feet of pine, and the southwest of the northeast has got 300,000 feet of white pine, and 200,000 feet of Norway pine. The southeast of the southeast of section 2-142-39 has got 150,000 feet of white pine.

Mr. Edgerton: I offer in evidence Plffs. Exs. 19, 20, 21, 22, 23, 24, 25 and 26.

Mr. Haupt: The admission of these exhibits in evidence is objected to by the government on the ground that they are incompetent, irrelevant and immaterial, and for the further reason
93 that they cannot be used to prejudice or defeat the rights of the minor allottees under their application for an allotment of August 8, 1904.

Q. Did you say that the allotments made on May 17th, that you just testified to, were made at the request of Samuel Mooers as well as those of May 15th?
A. Yes sir. At the same time that Mr. Mooers selected these allotments on May 15th for those two original allotments he selected allotments for his sister's children.

Mr. Haupt: We object to any allotments selected for his sister's children as being outside of the record and wholly immaterial and irrelevant to any issue in this action.

Q. Now, referring to town 141, range 42, you have a plat in your office of that township, have you not?
A. Yes sir.
Q. Was that plat a record in your office when you came in here? A. Yes sir.
Q. Are there any entries on that plat in regard to reservations of lands in section 18 in that township for the Mooers?
A. No.

Objected to by defendant for the reason that the lands in section 18, township 141-42 are not involved in this controversy. Further objected to upon the ground that the plat does not show that any lands in that section were actually allotted to either Alice or Lewis Mooers.

A. There is no record there now; I say there was at the time. Before Mr. Mooers made the selection of his original, additional allotment for those Mooers children, this land was marked reserved for S. E. Mooers and was not allowed to be allotted to anybody else.

Q. Can you describe the land?

A. I couldn't give you the exact description but there was four forties in section 18, township 141, range 42.

Q. As accurately as you can describe them.

A. Well, I can't; I don't know which forties they are. I know there are four forties in there, but I can't say which four were there. It was written on the plat here, four forties,
94 but for which four I don't know.

Q. You know that there were four forties reserved in section 18 for Samuel Mooers? A. Yes sir.

Q. That is, that the plat appeared to show that.

A. I think I know the four forties. I could give it to you as close as I can. I think it was the northwest of the southeast and the southwest of the northeast and the southeast of the northwest and the next forty laying west of the last described piece; that is a lot and the number of it does not appear here.

Q. It is practically a forty, isn't it?

A. Yes, it is a forty; there is a correction line along there and there happens to be three forties—

Q. Now, has that land been allotted to anybody else?

A. It has been.

Q. When? A. May 17, 1905.

Q. And the rest of those pieces?

A. May 16, 1905. Of course they were good prairie allotments and as soon as they were open for selection, someone took them.

Q. How long prior to the time they were allotted to somebody else had they been held in this office for Samuel Mooers, so far as you know?

Objected to by defendant as incompetent, irrelevant and immaterial.

A. I am testifying to what appeared on the plats. Those names appeared on the plats there a couple of years before, at least, that I know of.

Q. Had that been the practice in the office to reserve lands that had been improved or where request had been made in that way by marking on the plat there?

A. Where they had improvements, under the act of 1887 and the act of 1889, they had preference and were entitled to take those lands over anybody else, and if anybody had improvements, why notes were made on the plat so the office would not allot to somebody else lands where people had improvements because they had the first claim to take that land in accordance with the act of 1887.

95 Q. So far as you know, is there any entry in the books or records anywhere that any improvements had been put upon those lands in 18 that had been reserved?

A. Nothing that I know of.

Re-cross Examination

By Mr. Haupt:

Q. Mr. Mooers, so far as your knowledge extends, never asked to have those lands reserved?

A. Not to my knowledge, no sir.

Q. In section 18? A. No sir.

Q. And so far as you know, he was in no wise, or any member of his family was in nowise responsible for that entry on your plat?

A. Not so far as any personal knowledge I have, no sir.

Q. Mr. Mooers was here at the agency on the 24th of April, 1905, as I understand? A. Yes sir.

Q. But didn't make any selections on that day?

A. No sir.

Q. You had a talk with him at that time, did you not, Mr. Michelet? A. On the 24th of April?

Q. Yes. A. I think so.

Q. He didn't give you any descriptions that day for making any selections, did he? A. On the 24th of April?

Q. Yes.

A. No sir. Mr. Mooers was not reached in the way of taking allotments on that day. Any conversation I had with him was probably on the street or somewheres outside of the office. I think he was here on that day.

Q. Didn't you at some time after that at the agency (I am unable to fix the exact date) have a conversation with Mr. Mooers in which you told him that he would not be able to hold the land which he selected on August 8, 1904, and that he had better select some other land in lieu of that?

A. No sir, I never had any such conversation with Mr. Mooers.

Q. Nothing of that nature at all? A. No sir.

96 Q. Now, Mr. Michelet, calling your attention to these allotments as described in exhibits 19, 20, 21 and 22, being allotments to Lewis and Alice under the Act of 1889, I believe those are dated May 15, 1905? A. Yes sir.

Q. Did Mr. Mooers sign those applications?

A. No sir, he did not; that is, he did not sign them, he signed them by mark.

Q. Well, did he make the mark?

A. Yes sir, he signed them by mark.

Q. Were those applications written out by you?

A. No sir.

Q. By which one of your clerks?

A. They were written out by George A. Morrison. They are in George A. Morrison's handwriting.

Q. Did you personally have anything to do with the making of those allotments?

A. Yes sir. Mr. Mooers gave me the minutes that he wanted allotted, pointed it out on this plat here, the particular tracts that he wanted allotted to his children.

Q. Did he tell you the particular tracts he wanted allotted under the two acts? A. Yes sir.

Q. And designated to you particularly the tracts which should be allotted as original and those which should be allotted as additional?

A. Yes sir; he pointed out on the plat here the forties that he wanted allotted.

Q. Did you have any talk at that time about the allotments of August 8, 1904? A. Yes sir.

Q. What was said at that time about those allotments?

A. I told Mr. Mooers that I had heard that he intended to make some kind of a contest for the allotments under August 8, 1904, that he had made and asked him—and that I had heard that he had a plat of some kind that Mr. Perrault had given him—the clerk had given him, and asked him if he had that plat, and he said that he had it and that he would get it and return it to me; that if he got the lands that he ap-

97 plied for he was satisfied, and that he wasn't going to make any contest or make any claim to the lands that he had applied for on August 8, 1904.

Q. Did you ever advise him that he would be unable to get those lands of August 8, 1904?

A. I never advised him that. I told Mr. Perrault to advise him that those allotments were cancelled at the time they were made, as soon as I discovered that they had been made.

Q. What was the nature of that plat that you speak of that he said he would return to you?

A. Well, I don't know. I have never seen it; I don't know, but that is what I heard, that he had some plat. I suppose some

memorandum showing what lands had been allotted. I can probably tell you by showing you some of the plats. When allotments were made we had some small slips like these, and they would give the person who received the allotment a little memorandum showing what forties they were and give the section, town and range.

Q. Here is an allotment plat attached to the transcript of the proceedings had before the Department of the Interior in relation to this controversy. Do you think that is the plat?

A. Why, I don't know. That might be one. I have never seen it; I couldn't say.

Q. What use did you have of that plat, or why did you want him to return it?

A. Why, I notified Mr. Mooers that the allotment was cancelled, and I had heard that he was to make a contest on it, and I asked him if he intended to and he said he didn't, and of course I wanted, as far as it was within my power, I wanted to cancel that allotment under August 8, 1904. I wanted to wipe it out because it was never made with my consent.

Q. And you was anxious, when you wiped it out, to have it stay wiped out?

A. I don't know that I was anxious, I just wanted to do it, that is all.

Q. And by having Mr. Mooers surrender the plat you mentioned you thought that that would more effectually aid in wiping out the allotment; was that it?

A. No, I don't know as I thought that. The allotment
98 had been made contrary to my instructions to the allotting clerk and I wanted to wipe it out.

Q. But what particular effacacy was that plat in wiping out the allotment? A. Oh, I don't know that it was any.

Q. That plat wasn't of any special use to you or Mr. Mooers, was it? A. I don't know.

Q. Eh?

A. I don't know whether is was of any special use to him or not.

Q. Well, as to yourself how was it?

A. Well, it wasn't of special use to me only Mr. Mooers wasn't making any claim to that land. I didn't want anything to go out from the office to show that he was making any claim to it, that he had any right to it, because it went out of the office, in the first place, without my knowledge or consent, and if I had been here, it would not have gone out.

By Mr. Edgerton:

Q. I understood you to say there were two reasons: One, that they were timber lands relating to applications of August 8, 1904, and the other, that they were improved lands by the Mooers? A. Yes sir.

Q. Those were the two reasons why you ordered the applications canceled? A. Yes sir.

By Mr. Haupt:

Q. You give now an additional reason for canceling the allotments of August 8, 1904, and that additional reason is that at that time Mr. Mooers was using or improving unallotted lands?

A. Yes. The same reason I have given in my letter in the first opening of this case, the same as I told you this morning. My principal reason, though, was the pine land reason.

99 William F. Campbell, being first duly sworn, on behalf of plaintiff, testified as follows:

Examined by Mr. Edgerton:

Q. You are an attorney at law in this State? A. Yes sir.

Q. County Attorney of Mahoomen County, are you not?

A. Yes sir.

Q. Been in the practice of law how many years?

A. Well, in actual practice about five years, I guess; some of the time I was not practicing.

Q. Did you appear before the Department for Warren and Fairbanks in these cases? A. Yes, I did.

Q. There have been introduced in evidence in this case a letter or order of the Commissioner of Indian Affairs, dated July 13, 1906, in which the Commissioner of Indian Affairs directs the Indian Agent to disregard a former letter in which he had been directed to cancel the allotments to Warren and Fairbanks and to restore the allotments to Fairbanks and Warren. You remember such a letter, do you? A. I do.

Q. Now, I want to ask you, did you ever receive any notice or have any knowledge that an appeal had been taken from that letter or order to the Secretary of the Interior?

A. I did not.

Q. When did you first learn that there had been any appeal or pretended appeal taken from that letter or order of July 13, 1906?

Mr. Haupt: This question and all the testimony of the witness relative to receiving a notice of an appeal from the decision of the Commissioner of Indian Affairs, or of any knowledge of his part of the appeal having been taken, is objected to as incompetent, irrelevant and immaterial because it is not evidence in the case upon any issue presented by the pleadings and is not binding in any way upon the Court in which the action is now pending.

A. I did not learn until after the decision had been rendered on the rehearing or appeal, as you call it.

100 Q. And that was some time, then, in May last?

A. It was some time last spring; I don't remember the date.

Q. Well, it was after the decision had been rendered by the Secretary? A. Yes.

Q. Some time this last spring? A. Yes sir.

Q. Mr. Campbell, you have, in addition to practicing law, surveyed lands and made estimates of timber lands, have you not? A. I did, yes sir.

Q. Did you go over these two tracts of lands, to-wit, the northeast quarter of the northwest quarter and the southeast quarter of the northwest quarter of section 15, town 142, range 39, and the northwest quarter of the northwest quarter and southwest quarter of the northwest quarter of section 15, town 142, range 39? A. I did.

Q. When? A. On May 12, 1904.

Q. Did you make an estimate? A. Yes sir.

Q. Of the timber?

A. I made an estimate of the timber, yes.

Q. Who paid you for that work?

Objected to by defendant as incompetent, irrelevant and immaterial whether he made an estimate or not and whether he was paid or not or as to how much timber was on the land, it being admitted by the defendant that this land is properly classed as timber or pine land.

A. Ben. L. Fairbanks paid me for examining the northwest of the northwest and the southwest of the southwest of 15, and E. L. Warren paid me for examining the northeast and the southeast of the northwest quarter.

Q. How much did they pay you?

A. They each paid me $25 apiece.

Q. You know where Mr. Mooers lives, do you? A. Yes sir.

Q. What section and town does he live in?

A. In section 18-141-42.

Q. Did you go out to his place in 1904? A. Yes sir.

101 Q. What time in 1904?

A. Sometime about the midle of June 1904.

Q. What did you go out there for?

A. One Joseph Fairbanks hired me to go out there and look at some vacant land to make as selection and allotment for him.

Q. What did you find in reference to that section 18?

Mr. Haupt: In what respect?

Mr. Edgerton: Well, in regard to improvements.

Mr. Haupt: I further object to this class of testimony regarding section 18 for the reason it is not involved in this suit and is not relevant to any issue made by the pleadings in this action.

A. I had a plat of that township when I went out there and I went to the river and got my bearings from the river to locate myself to see what section I was on, and I followed the line on out until I struck section 18, and when I came to the corner where expected to find vacant land I found I was right on the corner of Mr. Samuel Mooers field. It was on the north of me, and on the south of me was a fenced up pasture.

Q. When you speak of Samuel Mooers, do you mean Samuel Mooers, the father of Alice and Lewis Mooers? A. Yes.

Q. What did you find fenced there?

A. I found a pasture fenced up.

Q. And how much land fenced up and what part of the section?

A. I couldn't tell, I forget exactly which part if the section. I think it was on the southeast quarter.

Q. What kind of a fence did you find there?

A. A wire fence and oak posts.

Q. How many wires? A. Two wires, I think.

Q. What kind of posts?

A. They were oak posts. I didn't go clear around the fence.

Q. Did you see any plow on this land?

A. No I couldn't; I just went to the corner of it.

No cross-examination.

102 Joseph E. Perrault, Being duly first sworn on behalf of plaintiff testified as follows:

Examined by Mr. Edgerton.

Q. Where do you reside?

A. I reside here in White Earth.

Q. What is your business?

A. My business is first assistant clerk.

Q. In the office of the Indian Agent at White Earth?

A. Yes sir.

Q. And Maj. Michelet is your superior officer here at the Agency? A. Yes sir.

Q. How long have you acted in that position, Mr. Perrault?

A. I have acted in that position since 1893.

Q. You are acquainted with Ed. Warren and Mr. Fairbanks? A. Yes sir.

Q. And Samuel E. Mooers? A. Yes sir.

Q. How long have you known these gentlemen?

A. I have known Mr. Warren and Mr. Fairbanks for thirty-five years.

Q. How long have you known Mr. Mooers?

A. I have known Mr. Mooers for about—oh, between eighteen and twenty years, probably twenty-two years.

Q. Now, do you remember applications being made here by Ed Warren and Mr. Fairbanks on June 29th and 30th, 1904, for certain allotments of land?

A. I remember Mr. Fairbanks and Mr. Warren coming in here and making—they came in and put down some pencil notice in a little book that we had, for pieces of land that they wanted to try to get as additionel allotment when the time would come to be allotted.

Q. Was it land in section 15, that has been referred to here as timber land? A. Yes sir.

Q. Do you remember when they did that?

A. I think it was sometime in June; I am not sure, but I think it was in June, 1904.

Q. Didn't they make and file written applications?

A. No more than what was filed in that little book; that is all that I know of.

103 Mr. Haupt: Do you know where that little book is?

Witness: Mr. Fairbanks has it.

Q. Do you know anything about Exs. 1 and 7?

A. No sir I do not. All I know about is a little book.

Q. You wouldn't necessarily know all the correspondence and papers that came to the Major here in the office anyway?

A. No sir.

Q. Do you remember of Samuel Mooers coming here to the office on August 8, 1904? A. Yes sir.

Q. Did you have any conversation with him there?

A. Yes sir.

Q. Did he make the applications shown by Ex. C?

A. Yes sir, that is my writing.

Q. That was for the east half of the northwest quarter, section 15, town 142, range 39? A. Yes sir, for Alice.

Q. And did he make application at that time to have alloted for his minor child Lewis Mooers the west half of the northwest quarter section 15, town 142, range 39?

A. He did, sir; and that is his signature to it.

Q. And that is his signature? A. Yes sir.

Q. Was each of the applications for allotment written out at that time when he signed? A. No sir. These things?

Q. Yes.

A. This was written out, yes sir, this description here.

Q. Whatever is in writing—

A. Whatever is in writing here, that is in black ink on that paper was written out at the time, except that signature; he put that on afterwards.

Q. Everything that was written in ink on the application was there before he signed?

A. Yes sir, in black ink.

Q. Was this word "reservation" on there too?

A. Yes sir.

Q. You state that in reference to Defts. Exs. D and A, do you?

A. I don't know what the exhibit is.

104 Q. These are called his exhibits. This is Defts. Ex. D and that is Defts. Ex. A. A. Yes sir.

Q. Now, all the writing was on there before he signed it?

A. Yes sir; that is, in black ink.

Q. Including the word "reservation" in each one?

A. Yes sir. You see that is my own writing.

Q. When you received those applications, Mr. Perrault, did you know that the land described in them was pine timber land?

A. I did not. I was just new in the office in that Department.

Q. Would you have received those applications had you known at the time they were timber land?.

Objected to by defendant as incompetent, irrelevant and immaterial.

A. I would not without first consulting the Agent.

Q. Mr. Perrault, there has been some evidence to the effect that in this township 141, range 42, section 18, that on the plat of that township in the records of this office, there was at one time noted that certain forty acre lots there were reserved for Samual Mooers. A. Yes sir.

Q. Who wrote that on there, do you remember?

A. I think it was Theodore Beaulieu, I am not sure. I found them there when I took possession of the land Department; that was marked on there, for the reason that they claimed that Mr. Mooers was improving that, either as a pasture or something else. And in fact, I kept Henry Bellanger from filing on those two eighties on account of Mr. Mooers.

Q. When was it that you did that?

A. That was in July of 1904, He came and made application, along with George Campbell, for those two eighties, and I told him I couldn't do it because Mooers had an improvement on it.

Q. Did anybody else ever apply for that same allotment of that same property there?

105 A. Not to my knowledge.

Q. Do you remember of a man by the name of Sinclair ever applying for it?? A. Henry Sinclair

Q. Yes. A. Yes.

Q. When did he? A. I don't remember.

Mr. Haupt: The government objects to any testimony relating to applications by any parties for allotments on section 18-141-42 or to testimony relating to the action of the allotting officer of White Earth Agency in relation to that land, as being wholly incompetent, irrelevant and immaterial and something not authorized or directed by Samuel E. Mooers or any member of his family, not done with the knowledge of any member of that family.

A. Yes, Mr. Sinclair did come in and want to take that land.

Q. When was that?

A. That was in 1894, (1904) but that was prior to Mr. Mooers filing on these other places, and I told him he couldn't have it because there was improvements on it. I think that other one there I am wrong about.

Q. Then you may correct it.

A. It is not Henry W. Bellanger, it is Henry Sinclair, and he came in along with George Campbell.

Q. So you are mistaken about Bellanger? A. Yes.

Q. So you want to correct your testimony in that respect, that it was Henry Sinclair instead of Henry Bellanger?

A. Yes. He is the man that made the application to me.

Q. That you think was in June, 1904, prior?

A. June or July.

Q. June or July, 1904?

A. Yes sir. And I wouldn't allot it to him. But the Bellanger part is wrong.

Q. Did Mr. Mooers ever speak to you about reserving that land in 18 for his children?

A. I don't think that he ever said anything to me about it; no, I don't remember of his saying anything to me about it. The only thing was that I saw those marks on the plat in pencil to hold for Samuel Mooers.

106 Cross Examination

By Mr. Haupt:

Q. You think it was in June that you saw Mr. Fairbanks about this land here in controversy? A. Yes, sir.

Q. You speak of it as being in section 15?

A. I think it was in June when he came and filed that memorandum in pencil.

Q. State all that was said and done when Mr. Fairbanks came into the office?

A. He merely came in and said he wanted me to mark down a piece of land that he wanted to hold for his children, and that eighty was put down in pencil. It wasn't a regular office record, however, it was merely a memorandum that we kept in the office without any instructions from the agent to keep.

Q. (To Maj. Michelet): Have you that book?

Maj. Michelet: Yes.

Q. And as I understood your testimony, he told you he would like to get that land when the time came for allotting it?

A. He came in and said he wanted me to hold that land if I possibly could. He didn't know how the land was going to be allotted or what conditions but when the time came for allotting the land, the agent called all the Indians together and all the mixed bloods and he had me stand in front of the door there with him; called up one Indian and then a mixed blood, and he would come in and give them a card each. No. 1 and No. 2, and so on.

Q. That was on the 24th day of April, 1905?

A. That was on the 24th day of April, 1905. And then they had to come in according to those numbers; and that is all I know about the allotments.

Q. But I was speaking more particularly about this time when Mr. Fairbanks came in and first called your attention to this land.

A. When he came in was the time that was put down there on that little book.

107 Q. Now, I will show you this little book. It is marked on the outside cover "5946. Department of the Interior, U. S. Indian Service". Is that the book you refer to?

A. Yes sir.

Q. Will you find the memorandum that you made at that time?

A. Yes sir, I will. There is one of them—Gracie Fairbanks. There is the other—Everet. There is another one.

Q. On what would be the seventh page of this memorandum book you made this entry, did you, June 29, "Annie Fairbanks, West half of the northwest quarter of section 15-142-39"? A. Yes sir.

Q. That was all that was done that day, was it?

A. That is all that I had to do with that. And that was not with the knowledge of the agent.

Q. That was not intended at that time as an application for an allotment; that is, you did not receive it as such, did you

A. It wasn't received as official as an application for allotment; it was merely to hold that land if possible for him.

Q. When the allotment time arrived?

A. Yes sir; so that he could get it.

Q. What did you do with this book when you made that entry? A. I put it in my desk.

Q. I understood you to say you returned it back to Mr. Fairbanks?

A. I returned that back to Mr. Fairbanks here last fall or this winter. I think it was last fall. I don't remember what time it was; it was last year some time.

Q. Some time last year? A. Yes sir.

Q. You handed this book back to him?

A. I gave it to him.

Q. For what reason did you give it to him?

A. He wanted me to let him have it so he could see what dates and things he had made of the filing; it was not an official book.

Q. Well, at the time, then, when you returned this book to Mr. Fairbanks last year some time, 1906, that was
108 the only record in the office then of this Agency showing that—

A. That is the only record that was in the office that I knew anything of. There may have been some records that had been handed to the agent that I knew nothing of, but that record is what I had taken myself.

Q. And at that time Mr. Fairbanks wanted this record so that he could find out when he handed that piece of land in to you? A. When he made the record, yes.

Q. When he came and gave you that description?

A. Yes sir.

Q. Well, you have charge of these application books where the printed allotment slips are in? A. Yes sir.

Q. For instance, such as this book where A, B, C and D appear? A. Yes sir, those are in my handwriting.

Q. Did you make a similar entry in this book for Ed. Warren? A. Yes sir, I did.

Q. Then you would say that in this book, to which your attention has been called, that there is no entry showing that Edward Warren, mentioned in this action, applied to you for any of the land involved in this suit?

A. Not to my knowledge.

Q. Did you have any other book?

A. No sir, that is the only one we had.

Q. Did you have a red-covered book in which you kept similar entries? A. No sir.

Q. Then you would say, from the fact that no entry appears in here showing that Ed. Warren applied to you to have reserved for him lands under the Steenerson Act, that he did not so apply?

A. He didn't apply to me, no. If he had, it would have been in that book. Mr. Fairbanks did, though.

Q. You did not treat Mr. Fairbanks' call on you to have this entry made in this book that I have already read,
109 as an application at that time for an allotment under the Steenerson Act?

A. I couldn't call it an application because the Steenerson Act had not come into effect yet, It was just merely made an application here to hold it for him, but we didn't cancel it, didn't mark it taken up on the plats. The plats were marked vacant.

Mr. Edgerton: I move to strike that out.

Q. You remember when Mr. Mooers applied to have this same land allotted to his children and when you did make out the application slips? A. Yes sir.

Q. Now, at that time you looked up your records to see whether this land was clear?

A. I looked up the records to see whether this land was clear on the plat, yes.

Q. Nothing showing on the plats, you allotted the lands to him? A. Yes sir.

Q. That is, you did all that you could in the way of making an allotment?

A. I made the allotment that he required, yes. I made them two allotments for him.

Mr. Edgerton: That is, you received the applications, did you?

Witness: I received his application and made out the allotment on the allotment sheet as an original allotment for his two children.

Q. Now, you say you made it out on an allotment sheet. What sheet is that?

A. The allotment sheets are over here in the office. It is the same as a schedule sheet.

Q. You completed the records of your office showing an allotment had been made to his two children? A. Yes sir.

Q. Based on the applications which have been introduced in evidence here? A. I did.

Q. So far as the records in your office are concerned,
110 the allotment to his children was complete?
A. Yes, until I had orders to cancel them.
Q. I say it was complete at that time? A. Yes sir.
Q. Now, do you recall at the time when Mr. Mooers was in here on the 8th of August, 1904, that you looked at your plats to see whether the land was clear, and that you also looked in some memorandum book that you had to see whether it was clear?
A. No, I didn't look into no memorandum book. I merely looked into the plat and seen that the land wasn't taken up in the plat, that was all, and made the application for him under the old law to allot them the original eighty.
Q. That is, under the 1889 Act you mean by the old law?
A. Yes.
Q. Then speaking from your own knowledge. Mr. Warren made no application to enter any land under the Steenerson law until on the 24th day of April, 1905?
A. I don't know about that. He didn't to me.
Q. I say so far as your knowledge extends.
A. He never made any application to me so far as I am concerned.
Q. Do you remember what time it was that you cancelled these Mooers allotments under instructions from the superintendent Michelet?
A. I couldn't tell you the exact date, but I think it was somewheres along in September, 1904. Maj. Michelet came in and said, "Did you allot to Mr. Mooers any land?" I says, "Yes." He says, "Let me look at it", and I showed him the application. He says, "You go to work and cancel that," and I wrote to Mr. Mooers that it will be necessary for him to come and take other allotments because this is pine and I can't allot pine upon an original allotment. I cancelled that and wrote Mr. Mooers that it was necessary for him to come and select other lands for his children owing to the fact that the lands he had taken was pine and we couldn't allot it.
Q. Did you keep a copy of that letter?
A. I don't think we kept a copy, but I sent it to him by the mail.
111 Q. But you didn't retain any copy?
A. No sir, I don't think we kept any copy. I don't think we took a copy.
Q. That was the only reason that the superintendent gave you for directing the cancellation of the allotments, that it was pine land?
A. That was the only reason, that the department wasn't allotting pine lands at that time.

Re-direct Examination.

By Mr. Edgerton:

Q. Was anything said on August 8, 1904, between you and Mr. Mooers, or at any other time, in regard to Fairbanks having applied for that land in section 15?

A. Not that I remember of.

Q. You don't remember of having any talk with Mr. Mooers at any time about that? A. No sir.

Q. Did you ever have any talk with Mr. Mooers about that letter that you think you wrote in September to him about having canceled those allotments? A. Yes sir.

Q. When and where was that?

A. Well, that was at Bob Bellanger's house where he asked me to give him an affidavit that I allotted those lands and the reason why I canceled them, and I gave him an affidavit and the reason that they were canceled, was because they were pine lands. That is the reason, that I had authority from agent Michelet—orders from him to cancel it and that I had written him about it, and then he wanted an affidavit that the lands had been allotted to him and why they had been canceled, and I gave him that affidavit. Bob Bellanger is the man who made it out. The affidavit stated plainly the reason for canceling the land, was because they were pine lands.

Q. You knew that reason before Maj. Michelet told you? You knew that on August 8, 1904, that you had no right to allot pine land and wouldn't have allotted this to him
112 or accepted that application at that time if you—

A. If I had known it was pine.

Edward Warren, being first duly sworn on his own behalf, testified as follows:

Examined by Mr. Edgerton.

Mr. Edgerton (To Maj. Michelet): Maj. Michelet, in regard to those applications that have been received in evidence, dated June 29, 1904., and June 30, 1904, made by B. L. Fairbanks for his daughter Annie, and Mr. Warren for himself, in regard to the land in controversy, I understood you to say, this morning, that you received them and the lists attached to them on the same day that they bear date or thereabouts?

Maj. Michelet: Yes sir.

Mr. Edgerton: And that they have been in your office ever since?

Maj. Michelet: Yes sir.

Mr. Edgerton: They came directly to you, did they?

Maj. Michelet: Yes sir, as all my mail does; they came by mail.

Mr. Edgerton: The book that has been referred to by Mr. Perrault is not a record of your office, is it?

Maj. Michelet: No sir.

Mr. Edgerton: Kept under your direction?

Maj. Michelet: No sir. I never saw the book until this controversy arose and Mr. Fairbanks said he had the book, and I told him to give it to me and I put it in my safe and saved it and kept it there since, and these two applications here —Mr. Warren's letter was treated as a letter. It came through the mail and was stuck on our spindle. When our letters come, they are put on a spindle and stuck away, filed in our
113 letter-book file. They were never treated as land applications and never went to the Land Department because I wasn't making allotments under the Steenerson Act at that time.

Mr. Edgerton: No matter what the application would have been to you, under the Steenerson Act. At that time, you would not have recognized it and made an allotment?

Maj. Michelet: No sir, I would not. I would have simply filed them with my letter file. My records show they were here, that is all, just the same as any other letter. And they were afterwards attached to this for convenience so that all the evidence would be together whenever it was wanted.

Mr. Edgerton: Both sides asked you to give this evidence in shape?

Maj. Michelet: Yes sir; and those were just attached lately, and they were simply attached because they were all of the applications made by those parties and they were there for convenience.

Mr. Haupt: Whose writing is that, purporting to be application June 24, 1905, signed by B. L. Fairbanks, do you know?

Maj. Michelet: As I stated this morning, I think it is B. S. Fairbanks', and it is signed by B. L. Fairbanks.

Q. Mr. Warren, I call your attention to Exs. 7 and 10 and ask you if the signature to Ex. 7 is in your handwriting and the writing in black ink in Ex. 10 is in your handwriting?

A. Yes sir.

Q. When did those exhibits leave your hands?

A. On the day they were written.

Q. That is the date of Ex. 10 which is June 30, 1904?
A. Yes sir.
Q. Did you mail those exhibits to Maj. Michelet, United States Indian agent? A. Yes sir.
Q. Where did you mail them? A. Cass Lake.
114 Q. In the United States mail? A. Yes sir.
Q. Did you pay the postage? A. Yes sir.
Q. Was it in an enclosed envelope? A. Yes sir.
Q. Directed to Maj. Michelet at White Earth agency?
A. Yes sir.
Q. Was it directed to Mr. Michelet, Indian Agent at White Earth, Minnesota?
A. I don't remember but I think it was anyway.
Q. Did you apply and intend to apply for an additional allotment under the Steenerson act, having already received an allotment of eighty acres? A. Yes sir.
Q. Under the acts of 1887 and 1889? A. Yes sir.
Q. That would make you, then, 160 acres? A. Yes sir.
Q. Did you make that in good faith believing you had a right to make that application? A. Yes sir.
Q. Have you ever received any other eighty except this?
A. No sir.
Q. Did you hear Mr. Campbell's testimony, that he went on there and made an estimate and you paid him $25 for doing it?
A. Yes sir.
Q. And that was some time a short time prior to that; is that correct? A. That is correct, sir.
Q. He was at that time doing some estimating work in surveying and running lines, was he? A. Yes sir.
Q. How long have you known Samuel Mooers here in the room? He is the father of Alice and Lewis Mooers, is he not?
A. Yes sir, I think he is.
Q. How long have you known Mr. Mooers?
A. Oh, I have known him, I couldn't say just the number of years, but I have known him some time before he came here to White Earth. I seen him a few times. I wasn't much acquainted with him. Perhaps known him for eighteen or twenty years. I don't know when I first met him, but I have known him for a long time.
Q. What business is he engaged in?
A. I guess he has farmed. He is in the hotel business now.
115 Q. Has he farmed it some? A. Yes sir.
Q. Has he ever been engaged in the logging business?
A. Yes sir.
Q. He is an intelligent man, isn't he, wide awake?
A. So considered by everybody.

Q. About how old a man is Mr. Samuel Mooers?
A. I couldn't say.
Q. —Who is in the room here. About how old?
A. Oh, I should judge he is 45 or 46.
Q. Is there anything further you wish to say on this matter?
A. I would like to explain about that book.
Q. All right.
A. I never made any application to Perrault for any land. I made my application—I talked with Michelet prior to making a written application, and I was advised by William Campbell to make a written application and not a verbal application, and Mr. Fairbanks was also advised by him. He thought it better to make a written application and have it on file than a verbal application, because he didn't think it would be business, it wouldn't stand. That is why we made the written application.

Cross Examination

By Mr. Haupt:
Q. Did you ever get from the agent's office any acknowledgment of the receipt of your application, Mr. Warren?
A. I don't remember whether I did a letter but—
Q. I asked you whether you ever got any written acknowledgment of it?
A. I don't think I did; I wouldn't be positive about that.
Q. Did the agent ever write you anything concerning that application for an allotment?
A. I couldn't swear to that, either, but I did talk to him about the letter and about the application soon after, because I was over and he acknowledged the receipt of it at that time.
Q. How soon after this letter was written?
116 A. Well, it was a very short time. I was over here a good deal during those days and am now. And I wanted to be sure that he got that application, is why I asked him, to be sure that he got the letter, and he said he had.
Q. Didn't you know at that time, they weren't making allotments under the Steenerson Act?
A. I knew—I got notice to come over here that they were making applications and I immediately made my application.
Q. Whom did you get that notice from?
A. From Ben Fairbanks.
Q. You didn't get any notice from this office?
A. No sir, not from this office.
Q. You talked with Maj. Michelet before you made this written application, did you?
A. Yes, sir, I talked to him the day before I left here. I think it was on the 27th or the 28th.
Q. Why didn't you make your application when you were here?

A. I talked with Campbell afterwards and Fairbanks and Campbell advised us to make a written application.

Q. I don't care what you talked with Campbell. You talked with Maj. Michelet the day before you made this application?

A. I asked him if they would accept an application under the Steenerson Act and he said not.

Q. Why did he say not?

A. He didn't give no reasons why.

Q. Didn't you inquire why he wouldn't?

A. He said that they wasn't prepared, didn't know to whom they were going to make the allotments.

Q. They were not prepared?

A. He didn't know to whom they were going to make them, didn't know whether there was enough to go around to give each one eighty acres or not, hadn't looked that up, something to that effect.

Q. And did he tell you that parties would be notified when they would begin to making allotments?

A. I don't think he did particularly because I don't think he knew.

Q. You understood, then, from what Maj. Michelet had told you, at the time when you wrote this letter to him of
117 June 30th, that they were not then making allotments under the Steenerson Act?

A. Under the Steenerson Act.

Q. And you had not been advised at that time when they would begin making allotments?

A. No sir, we later knew. We had notice later from Michelet the date he was going to begin allotting under the Steenerson Act.

Q. And he told you he wasn't receiving any applications at that time?

A. He didn't say he wasn't receiving any applications at that time but he wasn't making any allotments.

Q. Well, if he wasn't making allotments, he couldn't very well be receiving applications. I notice your application that you made on the 24th of April is not signed by you, Mr. Warren?

A. No sir.

Q. Now, you sign your name readily? A. Yes.

Q. What is the reason you didn't sign your application?

A. I didn't think it was necessary. I didn't know that I had to sign it, I just walked into the filing room and handed them the description and the land was vacant and asked that the allotment be made to me, that is all.

Q. You didn't sign that at all, then?

A. I didn't sign it, but I wrote it out. I didn't think it necessary. It is in my own handwriting.

Q. No, I am speaking about April 24, 1905, about this allotment? A. Well, I never saw that.

Q. You never saw that at all?

A. No. No sir, I never saw that.

Q. That was simply made out here in the office, then?

A. I suppose so; I never saw it.

Q. I see on that allotment it states "his mark"; you had nothing to do with that, that was just put on by the—

A. I suppose so. I never saw that. I don't remember that I signed any papers. I made the file and walked right out.

Q. All you did was to hand in to the allotment clerk the description of your land that you wanted allotted?

A. Yes; they were filed and I walked right around through the office.

118 Q. That is all you had to do with the allotment?

A. Yes sir.

Q. Did you ever have a talk with Mr. Mooers about his allotment on this land, that is, for his children?

A. No sir; I don't think I ever spoke to him. I don't remember of him speaking to me.

Q. Did you know at the time that you filed, that he had previously—where you filed on this on the 24th of April, 1905, that he had previously filed on the same land?

A. I didn't know it but I had heard it rumored that he had made application.

Q. If you had examined the records here in the office you would have known that, would you not?

A. I don't know whether I would or not. There was considerable talk that he had made application after we had, in August but I never thought anything about it. I know we had previous applications. We had to take our chances when the time came to file.

Q. You knew you had made previous applications, but you would have to take your chances on filing day?

A. We couldn't get the land until they accepted the filing.

Re-direct Examination

By Mr. Edgerton:

Q. Did you line up there the night before, the 24th of April, 1905, in front of the Agency?

A. Yes sir; we lined up that Sunday, the 23rd I think.

Q. The 24th was on Monday, was it?

A. Yes, the 24th was on Monday.

Q. There were two lines there, weren't there, in front of the Agency, full bloods and mixed bloods?

A. There was a line formed Sunday and the full-blood line was not formed until Monday.

Q. But the mixed bloods formed the night before?

A. The mixed bloods formed the night before, yes, and we staid there all night. I think we got out of the line at 4 o'clock in the afternoon.

119 Q. Where were you in the line?

A. If I remember right, I was eleven or twelve, somewhere along there.

Q. Was Fairbanks behind or ahead of you?

A. I think Fairbanks was directly behind me, I am not sure about that. I think he was behind me.

Q. You were right together?

A. We were right together, yes sir, all the time.

Q. In making your filing, did you do just the same as the rest—pointed out the land? A. Yes sir.

Q. And that was allotted to you right then and there?

A. It was vacant. They had the plats in front of them, and whenever you would come in with your application for a certain tract and handed it over to them, if it was vacant, they would allot it to you, but if it was covered by any other allotment, of course you couldn't get it and you would have to do something else, but this land, when I made the application, was vacant on the 24th of April, 1905.

Q. After that time when was the first that you heard that Mowers claimed this for his minor children, after April 24, 1905?

A. Well, I couldn't tell you. I really don't know for sure. I heard rumors around that he had, until he filed a contest, until we got notice that the allotments was canceled, a long while after. I don't remember the dates about that.

Q. It was a long while afterwards?

A. Yes, pretty nearly a year, I guess.

Q. You had heard, you say, before that he had made some claim? A. Oh, you mean before the 24th?

Q. Yes. A. They had a report around—

Q. That after you had applied he had applied? A. Yes.

Q. What I am getting at is, after this Monday, April 24, 1905, when did you first hear that he made any further claim, about how long?

A. Well, it was along during that winter some time that I heard that he was about to file a contest for those eighties.

Q. The following winter?

120 A. I think it was along in the winter some time; I didn't know for sure until we had notice that the allotments were canceled finally through this office. We got our notice.

Q. Mr. Warren, you heard me refer to the letter or order of the Commissioner of Indian Affairs, dated July 13, 1906, addressed to Maj. Michelet, in which he was directed to disregard

a former letter in favor of the Mooers children and to let your allotment and Fairbanks' stand? A. Yes sir.

Q. You remember that letter? A. Yes sir.

Q. Did you ever have any notice or knowledge that any appeal had been taken from that letter or order of July 13, 1906?

A. No sir.

Q. To the Secretary of the Interior? A. No sir.

Q. When did you first know anything about any steps taken in the Department to reverse that order of July 13th?

A. Not until we had notice from the agent here.

Q. That was last May, was it?

A. Yes; that our allotments—

Q. May, 1907? A. Yes, May, 1907.

Mr. Edgerton: Will you admit that Annie Fairbanks never received any notice or had any knowledge of that appeal until some time last spring?

Mr. Haupt: I suppose she received the same notice that her father did.

Mr. Edgerton: Yes, in May, 1907. Or shall we produce her?

Mr. Haupt: No, it will not be necessary.

Benjamin L. Fairbanks, being first duly sworn, on his own behalf testified as follows:

Examined

By Mr. Edgerton:

Q. What is your full name? A. Benjamin L. Fairbanks.

Q. How long have you resided here?

A. About thirty-five years.

Q. You are the father of the plaintiff Annie Fairbanks, in one of these actions? A. Yes sir.

121 Q. How long have you been acquainted with Samuel E. Mooers here, who is sitting there in the room?

A. I have known him for about thirty odd years.

Q. In making applications, Mr. Fairbanks, for his land, eighty acres, for your daughter Annie, in section 15 that is in controversy, had you any intention of wronging Mr. Mooers or any one in his family? A. No sir.

Q. Did you make these several applications in good faith?

A. Yes sir.

Q. Now, I will show you Plffs. Ex. 1; whose signature is that, B. L. Fairbanks? A. That is my handwriting.

Q. This letter Ex. 1 is dated June 29, 1904? A. Yes.

Q. Whose handwriting is Ex. 6 in?

A. My son, B. S. Fairbanks.

Q. That, that is in black ink? A. Yes.
Q. What did you do with those papers Exs. 1 and 6?
A. I brought it to the Agency.
Q. Simon Michelet, United States Indian agent?
A. Yes sir.
Q. When did you bring them here? A. June 29th.
Q. You have heard Mr. Campbell's testimony here that he made an estimate on this land that is described in Ex. 1 and that you paid him $25 for doing the work? A. Yes sir.
Q. That was correct, was it? A. Yes sir, that is correct.
Q. And you filed that application on the date it bears, with Simon Michelet, United States Indian Agent here at White Earth? A. Yes sir.
Q. Did you have any notice or knowledge that any one claimed any right or title to that property when you did that?
A. No sir.

Q. (To Mr. Warren): I will ask you if you had any, Mr. Warren—any knowledge that anybody claimed any right, title or interest whatever to any of the land described in your
122 letter of June 30, 1904, when you made that application?

Mr. Warren: No sir, I did not.

Q. Now, Mr. Fairbanks, you heard the testimony of the witnesses here about the lining up there at the Agency here on April 23rd and 24th, 1905? A. Yes sir.
Q. Were you among the line that lined up? A. Yes.
Q. When did you get into line? A. On Sunday, April 23rd.
Q. You were right in with Warren? A. Yes.
Q. About how far were you from the front end of the line?
A. I think we were either 11th or 12th, somewheres along in there.
Q. And you staid up all night, did you?
A. Yes sir, staid up all night until the next day at 4 o'clock.
Q. And the next day you applied for this particular tract described, for your daughter Annie? A. Yes sir.
Q. Was the allotment made to her? A. Yes sir.
Q. Did you know of anybody at that time that claimed any right or title to that land?
A. No sir. The plat showed it was vacant.
Q. How long after that did you hear of any contest by Mr. Samuel Mooers in behalf of his son Lewis?
A. Well, that must have been some time the next winter; I heard it rumored that they were going to contest.
Q. But for months there was no claim or any record of any claim or contest by Mr. Mooers?
A. No sir, I didn't hear of anything.

Q. You have heard the testimony here in regard to this Department letter of July 13, 1906, in your favor? A. Yes.

Q. Was any notice ever served upon you of an appeal to the Secretary of the Interior in that case? A. No sir.

Q. Did you ever have any notice or knowledge of an appeal until May, 1907? A. No sir.

123 Q. Not until after the decision of the Secretary of the Interior had been made against you?

A. Ed. Warren is the one that came and told me, and the agent told him that our allotment had been canceled and given back to Sam. Mooers again. That is the first I knew about it.

Q. That was in May, 1907, was it? A. Yes.

Q. How long have you known Mr. Mooers, did you say—35 years? A. All of that and more too, I guess.

Q. He is a very intelligent man, isn't he? A. Yes sir.

Q. What kind of business has he been engaged in?

A. Oh, he has been in the farm business, hotel business, horse business and all kinds of business, logging business, and everything else.

Q. If he is a good horseman he is a pretty—

A. He is the best horseman I know of now.

Cross Examination

By Mr. Haupt:

Q. You had a talk with Agent Michelet about taking this land some time before the 24th of April, 1905, did you not, Mr. Fairbanks?

A. I had a talk with him at the time I filed this paper, June 29, 1904.

Q. What did he say to you at that time?

A. He wasn't receiving allotments. He says, "You can file it."

Q. Did he tell you that he could not recognize your application at that time? A. Well, yes.

Q. And you so understood it— A. Yes.

Q. —that your—

A. Yes, I understood it that way, and I left the application there with him.

Q. You understood that your application gave you no right to the land mentioned, did you not?

Objected to by plaintiff as incompetent, irrelevant and immaterial. That cuts no figure in the case, as the witness had a perfect right to make his application notwithstanding
124 the views of the Indian agent, in protecting his rights in this case.

Q. You understood that from the agent?

A. That my application was no good?

Q. Yes.

A. Yes, that is [he] what he told me, but I didn't believe it. I thought my application was some good.

Q. And in your testimony before the Inspector, you was asked this question: "Did you ever have any conversation with the agent after you first filed your application to the office?" to which you answered, "Yes. The agent said he wouldn't consider my application or anything." That is correct, is it?

A. Yes sir.

Q. You testified in that investigation before the agent—That was about June, 1906, wasn't it, that you testified in the investigation conducted here by the Agent Churchill?

A. Yes sir, it was somewheres along in there.

Q. Concerning this same matter? A. Yes.

Q. Now, at that time, in June, 1906, you didn't exhibit to Churchill, who was the inspector, this document you have presented here to-day, that is, your application of June 29th.

A. Well, the agent had it.

Q. Well, it wasn't shown at that time?

A. Well, I don't know anything about that.

Q. Don't you know that it wasn't referred to in your testimony? A. No sir, I don't remember anything about it.

Q. If that was in existence at that time why didn't you exhibit then— A. Well, he didn't ask—

Q. —to show that you had made this application?

A. He didn't ask anything about it, so I didn't think it was necessary. I thought he knew all about it.

Q. You heard Mr. Perrault's testimony here that you came to him last fall to get this book in which a memorandum
125 was made of this tract of land?

A. Why, that was—

Q. You heard that testimony, didn't you? A. Yes.

Q. Was that true?

A. Well, I didn't come to him; he gave it to me himself.

Q. He said you came to him.

A. I didn't; he came to me himself.

Q. And that you came to him with a view to find out at what time you had applied to enter that land? A. No sir.

Q. That isn't true, then? A. No sir, that isn't true.

Q. Why should he give you the book?

A. I don't know why. He says, "You can take the book." We were standing right there, and he says—

Q. Do you mean to say that he voluntarily, without any suggestion on your part, came and handed you that book?

A. Yes sir.

Q. You had no earthly use for it, did you? A. No.
Q. What did you take it for?
A. I don't know why. There was some other allotments that we wanted to see.
Q. Some other allotments you wanted to see?
A. Yes sir.
Q. There was something you wanted to see out of it?
A. Not my allotment; I know what I took.
Q. You wanted to see about some allotments, did you?
A. Yes, some other allotments there.
Q. You wanted to see about those? A. Yes.
Q. You asked him for the book, did you?
A. No sir, I didn't.
Q. How did he know you wanted to see about the allotments?
A. When he offered it to me, I says "All right, I will take it," and I put it in my safe and kept it there until I gave it to the agent.
Q. How long did you keep it?
A. I kept it there, I guess, six months. I never paid no attention to it.
Q. Who asked you for it?
A. Nobody. I was telling the agent that I had it, and the agent says "You better fetch it over here," so I
126 fetched it right over.
Q. About what time was it you got that book?
A. I don't remember; some time last fall, I think, or last spring, somewhere along in there.
Q. Was that after you heard about Mooers contesting your claim that you got it? A. No sir, I heard before.
Q. Then it isn't true that you told Perrault that you wanted that so that you could get the date— A. No sir.
Q. —of the time that you handed in that land?
A. No sir, I know the dates myself without the book.
Q. You want to say now that Perrault is simply telling that without ever having heard it from you?
A. Well, he came and gave it to me. We was standing there and looking at it. I wanted to see the book about something and he says, "You just take it," he says.
Q. You say that his statement that you told him you wanted the book in order to get at the date of that memorandum there, June 29, 1904, is altogether false?
A. Yes sir; if he said that, it is false.
Q. You heard him say it, didn't you? A. No.
Q. You was here in the room?
A. Yes, I was standing there, but I don't think he said those words.

Q. Do you mean to say you didn't hear his testimony?
A. I heard some parts of it, but I don't think he said that, that I wanted to get the dates.
Q. You don't think he said that? A. No, I don't.

W. R. Morton, being first duly sworn, on behalf of plaintiff, testified:

By Mr. Edgerton:
Q. What is your age, Mr. Morton?
A. I am sixty-seven years old.
Q. Are you a surveyor? A. Yes sir.
127 Q. How long have you been a surveyor?
A. Oh, I have been following it for about twenty-five years.

Mr. Edgerton: Will you admit that if present Annie Fairbanks would testify that she had no notice or knowledge of this appeal from this Department letter or order of July 13, 1906, until her father received it in May, 1907?

Mr. Haupt: She had no notice other than what she received through her father. That she had no knowledge or notice of any of the proceedings herein except such knowledge that she gained through her father.

Mr. Edgerton: How old is she now?

Mr. Fairbanks: She is about fourteen now; born in 1893.

Q. Mr. Morton, what does Ex. 27 represent?
A. It represents lot 4 in section 7, and lots 2, 3, 7, 8, 9 and 10 in section 18, township 141, range 42.
Q. Is that section fenced?

Mr. Haupt: That testimony by the witness Morton is objected to upon the ground that the same relates to lands other than those involved in this controversy and because it further appears from the evidence that the lands in section 18 have been allotted to allottees not parties to this controversy; it is therefore incompetent, irrelevant and immaterial.

Q. Has section 18 been fenced? And if so, what part of it?
A. Well, lots 7 and 8 and 3, 9 and 10 have all been fenced, but the fence is torn down clear around lot 2, been recently taken down.
Q. Is there a fence on the east [dside] of lot 2?
A. No sir.
Q. No fence there at all? A. No fence there.
Q. Those lots that you have just spoken of are parts of section 18, township 141, range 42? A. Yes sir, of 18.